

Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns.

Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

12. ENCUMBRANCES

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "Financing Event" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "Ownership Interests"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of subsection 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "Encumbrance" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "Encumbrance Holder") as security for a loan. The term "Encumbrance Holder" shall also be deemed to include any successors and assigns of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or any designee which has been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such permitted successors, assigns, or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted to Encumbrance Holders under this Lease. The term "Equity Encumbrance Holder" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Events. Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents, then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom it receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 of this Lease.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "Excluded Defaults"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any recapture right on the part of County, or (iii) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction work described in Sections 5.1, 5.14 or 5.15 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations

afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (except with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination (other than a termination with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent

simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same

thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, except in each case other than the partial termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that

are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance (except for easements or other matters to which this Lease is subject) on County's fee interest in the Premises (except for easements or other matters to which this Lease is subject), and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Capital Improvement Fund or Renovation Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1. Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease, within five (5) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2. Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3. Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4. Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5. Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1. Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages.

13.3.2. Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3. Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1. Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2. Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3. Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for

thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by County; notwithstanding the foregoing, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval will not be unreasonably withheld.

The requirements of this paragraph may be waived or modified in advance by Director upon submission by Lessee of a substitute plan acceptable to Director for recording sales and other income.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required shall be kept or made available at the Premises or at another location

within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1. Entry by County. County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major office buildings and major parking service companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 Accounting Year. The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and

methodology of accounting records and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of _____ Dollars (\$_____) toward those costs. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Execution Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1. Disclosures and Waiver.

15.4.1.1. "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1966. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary;

including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2. Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3. Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4. California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

Lessee's Initials

15.4.2. Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent in effect at the end of the Term shall be increased to one hundred twenty five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over

shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY: Director
Department of Beaches and Harbors
Los Angeles County
13837 Fiji Way
Marina del Rey, California 90292
Phone: 310/305-9522
Fax: 310/821-6345

With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Attn: County Counsel
Phone: 213/974-1801
Fax: 213/617-7182

LESSEE: Holiday-Panay Way Marina, L.P.
c/o Goldrich & Kest Industries
5150 Overland Avenue
Culver City, California 90230
Attn: Warren Breslow
Phone: 310/204-2050
Fax: 310/204-1900

With a Copy to: Holiday-Panay Way Marina, L.P.
c/o Goldrich & Kest Industries
5150 Overland Avenue
Culver City, California 90230
Attn: William Yerrick, General Counsel
Phone: 310/280-5043
Fax: 310/280-5014

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable immediately upon demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation attorneys' fees for County Counsel's services where County is

represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than an amendment to implement an arbitration judgment and other than an amendment to confirm the termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or an affirmative vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is necessary in order to secure such affirmative vote or approval and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (1) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (2) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); (3) the dates, if any, to which all rental due thereunder has been paid; and (4) whether the certifying party is then aware of any charges, offsets or defenses against the enforcement by the other party of any agreement, covenant or condition hereof to be performed or observed by the certifying party (and, if so, specifying the same). Prospective purchasers and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Waterfront Promenade. As a part of the Redevelopment Work, Lessee agrees to (i) provide a continuous pedestrian walkway and view piers approved by County ("Promenade")

along the entire waterfront portion of the Premises to comply with the intent of the Local Coastal Program's waterfront promenade plan, (ii) replace all fencing on the Premises with new fencing approved by County, (iii) repave all parking areas, and (iv) complete new or refurbished restrooms for the anchorage tenants. The foregoing work is collectively referred to in this Lease as the "Promenade Work." Lessee shall perform the Promenade Work as part of the Redevelopment Work. The facilities to be constructed under this Section 15.19 shall be constructed in accordance with the provisions of Article 5. Lessee shall join the Promenade located on the Premises with the adjacent promenade located on Parcel 20 and repair any damage to the promenade improvements located on Parcel 20 incurred in connection with Lessee's construction of the Promenade under this Lease. County hereby reserves a public easement for access over and use of the Promenade for pedestrian purposes and such other related uses (including, if approved by County bicycling, rollerblading and the like) as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with maintenance and repair standards established by the County from time to time. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of this Lease. At the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.20 Parking.

15.20.1 General. As part of the Redevelopment Work Lessee is required to construct the Parking Structure described in Section 5.1 of this Lease. It is contemplated that the New Commercial Building and the new Anchorage Improvements will require the construction of 241 parking spaces. The exact number of parking spaces required by applicable code to serve the New Commercial Building and the new Anchorage Improvements is referred to herein as the "On-Site Parking Spaces." In addition to the On-Site Parking Spaces, Lessee shall construct 112 parking spaces to serve the anchorage improvements located on Parcel 20 (the "Additional Parcel 20 Parking Spaces") and 94 public parking spaces to satisfy replacement public parking required to be constructed in connection with the development of Parcel 147 (the "Replacement Parcel 147 Parking Spaces") to the extent that the requirement for the Replacement Public Parking Spaces is not eliminated or reduced in connection with receipt of the entitlements and governmental approvals required for the development of Parcel 147. The 447 parking spaces required to be contained in the Parking Structure pursuant to Section 5.1 is based on the foregoing parking requirements. If the required number of On-Site Parking Spaces and/or Replacement Parcel 147 Parking Spaces changes, then the total number of parking spaces required to be contained in the Parking Structure shall be adjusted to reflect any such change. The Parking Structure shall be designed and constructed at the sole cost of Lessee. Any cost sharing agreement that Lessee, the Parcel 147 Lessee and/or the Parcel 20 Lessee may have entered into with respect to the cost of the design and construction of the Parking Structure shall be a matter as between Lessee and such other lessees, and shall not limit or otherwise affect Lessee's obligations to County with respect to the

construction of the Parking Structure. County shall have no obligation with respect to the cost of the design and construction of the Parking Structure.

15.20.2 Additional Parcel 20 Parking Spaces. County hereby reserves a non-exclusive, irrevocable easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Additional Parcel 20 Parking Spaces for parking purposes for the benefit of the anchorage improvements located on Parcel 20. Lessee shall not have the right to charge County, the Parcel 20 Lessee or any Designee (as defined below) for the use of the parking set forth in this subsection 15.20.2, except that during any period during which Parcel 20 continues to be leased to Parcel 20 Lessee, Lessee and such Parcel 20 Lessee shall have the right to mutually agree to a parking charge for the use of the Additional Parcel 20 Parking Spaces, but such charge shall not be binding on County on and after any termination of the lease for Parcel 20 in effect as of the date of this Lease. The Additional Parcel 20 Parking Spaces shall be in a location approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs, or such other location as approved by Director from time to time. The users of the Additional Parcel 20 Parking Spaces shall have access to and use of the Additional Parcel 20 Parking Spaces 24 hours per day, every day, in accordance with the Operation Plan approved by Director pursuant to subsection 15.20.4 below. The easement described in this subsection 15.20.2 shall run for the benefit of County, as fee owner of the portion of Parcel 20 on which the anchorage improvements are located, and any Parcel 20 Lessee, as lessee of such portion of Parcel 20. The Parcel 20 Lessee (or County if there is no Parcel 20 Lessee) shall have the right to designate users of the anchorage improvements located on Parcel 20 (including visitors) as permitted users of the parking rights set forth in this subsection 15.20.2 ("Designees"), but this subsection 15.20.2 is not intended to confer any rights (including, without limitation, rights to enforce this subsection 15.20.2 as a third party beneficiary) on any third parties, including any such Designee. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the parking rights set forth in this subsection 15.20.2. Parcel 20 Lessee shall indemnify, defend and hold Lessee harmless from and against all claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) incurred by Lessee for the death of or injury to persons or damage to property, arising in connection with or related to the use of the easement described in this subsection 15.20.2 by Parcel 20 Lessee or its Designees.

15.20.3 Replacement Parcel 147 Parking Spaces. County hereby reserves a public easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Replacement Parcel 147 Parking Spaces for public parking purposes. The location of Replacement Parcel 147 Parking Spaces and the access ways and circulation plan for public use of the

Replacement Parcel 147 Parking Spaces shall be approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs. The Replacement Parcel 147 Parking Spaces shall be open to the public seven (7) days per week in accordance with such rules and regulations (including hours of public access) as are promulgated from time to time by County regulating such public use. Lessee shall make no use of the Premises, including without limitation the other parking located thereon, that interferes with the public easement described in this subsection 15.20.3 or is prohibited under or in conflict with the rules and regulations established by County for the use of the Replacement Parcel 147 Parking Spaces. County shall not be obligated to pay Lessee any compensation for the Replacement Parcel 147 Parking Spaces. Lessee shall have the right to charge the users of the Replacement Parcel 147 Parking Spaces for the use thereof in accordance with rates approved by County (with California Coastal Commission approval as required under Applicable Law) consistent with the public parking rates established (as modified from time to time) for other similar public parking in Marina del Rey. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the public parking rights set forth in this subsection 15.20.3.

15.20.4 Parking Structure Operation Plan. Not later than ninety (90) days prior to the opening of the Parking Structure, Lessee shall submit to Director for Director's approval, a plan for the operation of the Parking Structure (the "Operation Plan"), including without limitation, hours of operation, access procedures, security, parking charges (if any) and other specifications pertaining to the operation of the Parking Structure. Lessee shall be obligated to operate, maintain and repair the Parking Structure at its sole cost and expense, in accordance with a standard of operation, repair and maintenance at least commensurate the standard of operation of other comparable first-class parking facilities in Marina del Rey. Lessee shall operate the Parking Structure in accordance with the Operation Plan, as approved by Director, and shall make no modifications to such Operation Plan without the prior written approval of Director.

15.21 Dockmasters. Throughout the Term, Lessee shall maintain a dockmaster program acceptable to County to manage Lessee's anchorage at the Premises. Such dockmaster system may be jointly operated with the anchorage for Parcels 18 and 20.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to the Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the Effective Date have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the

required period, or such reasonable extension thereof as may be granted in the Director's sole discretion, shall be ineligible for continued slip tenancy on the leasehold premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.24 No Merger. If, prior to the expiration of the Term, County or Lessee shall acquire the interest of the other in the Promises, or any portion thereof, there shall be no merger of the leasehold estate into (a) the fee simple estate in the Premises, (b) the sub-reversionary interest held by County or (c) any leasehold estate superior to that held by Lessee.

15.25 365 Election. County and Lessee agree, for the benefit of any Encumbrance Holder, that for so long as an Encumbrance shall encumber Lessee's interest in the Premises, the right of election arising under Section 365(h)(1) of the Bankruptcy Code may be exercised solely by Encumbrance Holder and not by Lessee. Any exercise or attempted exercise of such right of election by Lessee shall be void.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" he shall follow the format described for the

Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(a) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(b) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(1) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(2) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(3) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(c) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(1) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(2) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(3) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written



To enrich lives through effective and caring service

February 7, 2008



Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **ITEM 5a - APPROVAL OF LEASE AGREEMENT – SANTA MONICA WINDJAMMERS YACHT CLUB-PARCEL 47 (13589 MINDINAO WAY) - MARINA DEL REY**

Item 5a on your agenda pertains to a new 5-year lease between the County of Los Angeles and the Santa Monica Windjammers Yacht Club (Yacht Club). The Yacht Club is a sublessee of the Parcel 47 lessee (SMYC Marina) and the County lease with SMYC Marina is terminating effective March 24, 2008. To retain the Yacht Club in their current facilities, we are proposing a 5-year lease agreement.

The new lease agreement allows the Yacht Club to use the existing yacht club building and other appurtenant areas on Parcel 47, including the use of seven reserved parking spaces and 27 dry boat storage spaces for the benefit of its yacht club members. Additionally, the intent of the lease agreement is to provide time for the County to design and develop an expanded Chace Park wherein we intend to provide facilities for the Yacht Club.

The Board of Directors of the Yacht Club met on February 5, 2008 and voted to recommend to the members of the Yacht Club ratification of the negotiated lease. The members of the Yacht Club will hold a special meeting on February 16, 2008 to vote on the ratification of said lease.

Attached is a copy of the Board letter that explains the details of the proposed transaction. The exhibits to the Board letter include a copy of the proposed lease. Your Commission's endorsement of the Chief Executive Office recommendations to the Board of Supervisors is respectfully requested.

SW:SHK:dlg.shk

Attachment

March 4, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF LEASE
AGREEMENT- SANTA MONICA WINDJAMMERS YACHT CLUB
(Parcel 47 at 13589 Mindanao Way) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the recommended actions is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Authorize the Director to enter into County agreements to retain the yacht club subtenant (Santa Monica Yacht Club, Inc., dba Santa Monica Windjammers Yacht Club) and slip tenants in good standing upon the termination of the lease with S.M.Y.C. Marina.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved a negotiated deal in Closed Session to terminate the existing Parcel 47 lease and negotiate a Term Sheet with the Parcel 47 yacht club sublessee, the Santa Monica Windjammers Yacht Club (Yacht Club). The agreement allows the Yacht Club to continue to occupy its current facility for a 5 year lease term. If the County determines that it is able to accommodate the Yacht Club in a new facility in the proposed expansion of Chace Park but the new facility is not completed at the end of the 5 year lease term, the lease term may be extended for up to 3 additional periods of one year each. In anticipation of the County's termination of the existing Parcel 47 ground lease, the ground lessee has given the Department of Beaches and Harbors (Department) written notice of the Parcel 47 ground lessee's decision to terminate the existing ground lease effective March 24, 2008, as allowed under the terms of said lease. The proposed lease with the Yacht Club is intended to commence effective upon the termination of the existing ground lease. The Board of Directors of the Yacht Club

recommended that the Yacht Club members ratify the terms of the new Parcel 47 Lease. The members then held a special meeting on February 16, 2008 and approved the new Lease.

The new Yacht Club Lease provides for a monthly rent of \$8,000 (subject to annual CPI increase up to 3% per year), net of property taxes, insurance, utilities, and common area costs ("NNN"), plus percentage rent of (a) 7.35% of the first \$390,000 of gross receipts generated in connection with the use or operation of the yacht club facility, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar sales, telephone/vending receipts or other gross receipts received by the Yacht Club or a successor yacht club in the yacht club facility, plus (b) 17.5% of the above gross receipts over \$390,000; plus (c), 25% of gross receipts for dry storage and storage lockers; use by the Yacht Club of the existing yacht club building, along with the adjacent sidewalks and landscaping, the dry storage facilities, the exterior patio areas located in the back of the yacht club building and the patio/deck on the top of the boater restrooms, the fenced in mule storage area, and other areas on which the hoist and waterside areas are located, including the dock/slip adjacent to the hoist (G1626 and 1628); a security deposit of \$13,000; the reversion to the County of the boater bathrooms, the Promenade, and the adjacent parking lot except that Yacht Club has the right to use 27 parking spaces in the parking lot for dry dock storage and designate 7 parking spaces in the parking lot exclusively for the Yacht Club use; reversion to the County of the existing anchorage on the Parcel 47 Marina with qualified Yacht Club members having the first right to lease vacant slips; Yacht Club's obligation to maintain and repair the areas controlled by the Yacht Club while the County has the obligation for structural repairs to the yacht club building (including building exterior and HVAC and elevator systems) and all other areas reverting to the County; the Yacht Club's payment of a pro rata share of maintenance costs for the exterior areas maintained by the County; liquidated damages of \$100 per day (adjusted for inflation) for each cited lessee maintenance deficiency that remains uncured after the specified cure period; payment of late fees and interest on overdue County payments and certain record-keeping standards. The Department is requesting authority from your Board to execute the new Lease in substantially the form attached hereto as Exhibit A.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility", respectively, the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed terms of the 5-year lease with SMWYC:

BOARD POLICY ITEM	TERMS
PREMISES	<ul style="list-style-type: none">• The demised premises ("Premises") will include the SMWYC Clubhouse building and its most adjacent sidewalks and landscaping, the exterior patio areas located at the back of the building and the patio/deck on top of the boater restrooms, the dry storage facilities, the fenced in mule storage area, and certain areas on which the hoist and waterside staging area are located, including the dock/slip located adjacent to the hoist (G1626 and G1628).• SMWYC will be provided with access rights over those areas not included in the Premises to the extent necessary for access to and between portions of the Premises, and County will reserve easements over exterior portions of the Premises as necessary for use of and access to and between parking, anchorage, boater restrooms and other associated exterior areas.
PARKING	<ul style="list-style-type: none">• SMWYC shall have the right to use 27 parking spaces for dry boat storage purposes. The 27 dry storage spaces are: 1) all the parking spaces along the eastern boundary of Parcel 47; 2) the 10 most eastern spaces (90 feet) on the water side of the planter median; and 3) the most eastern spaces (90 feet) along the southern boundary of Parcel 47.• SMWYC shall have the right to designate up to 7 parking spaces for exclusive yacht club use.
BOAT SLIPS	<ul style="list-style-type: none">• SMWYC shall have the first right of refusal for vacant boat slips for a period of ten days.
TERM	<ul style="list-style-type: none">• 5 years from expiration of existing lease subject to early termination for: a) relocation to a new facility; or b) failure of the Yacht Club to maintain \$175,000 annual dues.

BOARD POLICY ITEM	TERMS
RENT	<p>Minimum Rent</p> <ul style="list-style-type: none"> • \$8,000 per month, net of property taxes, insurance, utilities, and common area costs. • Annual CPI increase up to 3% per year. <p>Percentage Rent</p> <ul style="list-style-type: none"> • 7.35% of first \$390,000 of gross receipts derives from the operation of the Yacht Club • 17.5% of all gross receipts derived from the operation of the Yacht Club over \$390,000 • 25% of all gross receipts derived from dry storage and storage lockers
ARBITRATION	<ul style="list-style-type: none"> • Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.
ASSIGNMENT OR SUBLEASE	<ul style="list-style-type: none"> • SMWYC shall not assign the Lease or sublease the Premises without the County's prior written consent, which consent may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, County agrees not to unreasonably withhold its consent to a merger of SMWYC with one or more other Marina del Rey yacht clubs, and the assignment of the Lease to a successor entity resulting from such a merger.
LEASE ADMINISTRATIVE ITEMS	<ul style="list-style-type: none"> • A 6% late charge after the 5th day plus interest at Prime + 3% for any late payments from due date until paid. Lessee entitled to waiver of late charge once each year so long as paid within one business day of notice by County. Interest applies to all overdue amounts regardless of notice provisions. • Security deposit of \$13,000. • County reserves the right to adjust insurance levels if the Term of the Lease extends beyond 5 years. • SMWYC to provide monthly reports and an annual CPA certification of gross receipts.
PROMENADE	<ul style="list-style-type: none"> • County to maintain promenade, with reimbursement by Lessee of 20% of such maintenance costs in accordance with section RENT above.

BOARD POLICY ITEM	TERMS
MAINTENANCE	<ul style="list-style-type: none">• SMWYC to maintain and repair Premises except for structural elements such as building exteriors and HVAC system and elevators).
INSURANCE	<ul style="list-style-type: none">• SMWYC will be required to carry and maintain insurance on the Premises and its use of the parking, common areas and hoist in accordance with County risk management policy.
HOIST	<ul style="list-style-type: none">• During the Term of the Lease SMWYC will own the hoist and be responsible for its operation, maintenance and repair. Ownership of the hoist shall transfer to County at the termination of the Lease.

FISCAL IMPACT/FINANCING

The termination of the existing lease and approval of the new Lease for Parcels reflects the County's attempt to accommodate a preferred use. The new Lease will produce a fiscal benefit to the County due to: a) the negotiated rent (minimum and percentage) that the Yacht Club will be paying; and b) collection of rents directly from the existing slip tenants (rather than collection of percentage rent from lessee) due to the reversion of the existing docks to the County. The rental increase is discussed in detail below.

Revenue Increase Due to Lease Termination and approval of the new Lease

The total revenue derived from Parcel 47 during fiscal year 2006-2007 was approximately \$259,000. After termination of the existing lease and commencement of the new Lease, the County anticipates a net revenue increase in the range of \$320,000 to \$550,000 annually from the negotiated rent to be paid by the Yacht Club and collection of anchorage rents directly from the slip tenants for the continued use of the land and water area.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing lease for Parcel 47 expires on March 24, 2008 due to existing lessee giving the County notice of lessee's decision to terminate the lease, as allowed under the existing lease. The members of the Yacht Club have ratified the terms of the new Parcel 47 Lease between the County and the Yacht Club. Upon termination of the existing

lease, the County will enter into a new lease with the Yacht Club for an additional 5 year period.

Parcel 47 consists of an existing yacht club facility and an anchorage with 173 slips and six end-ties (with the possibility of mooring up to 11 boats on the end-ties) and is located on Mindinao Way adjacent to Burton Chace Park. The yacht club will rent the Premises from the County but will allow control of the parking lot (except for 27 parking spaces for dry boat storage and 7 parking spaces designated for the use of the Yacht Club) and the anchorage to revert to the County which will manage the parking lot and anchorage and collect rent directly from the Yacht Club and slip tenants

The County anticipates incorporating Parcel 47 into its final design for the expansion of Burton Chace Park wherein it plans to include a facility for the Yacht Club as part of the overall development, either on Parcel 47 or in another part of the expanded Burton Chace Park.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code Sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendations to approve the new Lease for Parcel 47 in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the agreements does not authorize construction or reconstruction of any improvements on the parcel.

CONTRACTING PROCESS

The Yacht Club's proposal for a new Lease was received in response to County's decision not to renew the existing lease on Parcel 47. The new Lease for Parcel 47 will be available to the Yacht Club upon the termination of the existing lease. .

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects, as the County will manage, maintain and control all aspects of the Parcel 47 property operations.

The Honorable Board of Supervisors
March 4, 2008
Page 7

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed lease agreement to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:shk

Attachment (1)

c: County Counsel

LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

SANTA MONICA YACHT CLUB

(Lease No. _____)

Dated as of _____, 2008

TABLE OF CONTENTS

1.	BACKGROUND AND GENERAL.....	1
1.1	Definitions	1
1.2	Lease	5
1.2.1	As-Is.....	5
1.2.2	Title.....	6
1.2.3	Additional Access Rights	6
1.2.4	Parking Lot	6
1.2.5	Anchorage.....	7
2.	LEASE TERM.....	9
2.1	Term.....	9
2.2	Early Termination or Extension of Term in Connection with Replacement Facility	9
2.3	Early Termination for Failure to Meet Dues Threshold	9
2.4	Relocation of Premises During Term	9
3.	USE OF PREMISES.....	10
3.1	Permitted Use.....	10
3.2	Prohibited Uses	10
3.3	Signs and Awnings	11
3.4	Compliance with Regulations.....	11
3.5	Rules and Regulations	11
3.6	Reservations.....	11
4.	RENTS AND OTHER PAYMENTS	12
4.1	Base Rent	12
4.2	Percentage Rent	12
4.3	Gross Receipts	12
4.4	Net Lease	14
4.5	Rent Payments	16
4.6	Late Fees	16
5.	IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.....	17

5.1	Ownership of Improvements	17
5.2	No Alterations Without Approval of Landlord	17
5.3	Protection of Landlord	17
5.4	Surrender of Possession of Premises at Termination of Lease.....	17
6.	CONDEMNATION.....	18
7.	SECURITY DEPOSIT	18
8.	INDEMNITY	19
9.	INSURANCE	19
10.	MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION	24
10.1	Allocation of Maintenance and Repair Obligations	24
10.2	Maintenance Deficiencies.....	25
10.3	Repairs Not Performed by Lessee	26
10.4	Damage of Destruction	27
11.	ASSIGNMENT AND SUBLEASE.....	27
12.	NO ENCUMBRANCES.....	27
13.	DEFAULT	28
14.	ACCOUNTING	29
15.	MISCELLANEOUS	31
16.	ARBITRATION	35
17.	INTERPRETATION	40
EXHIBIT A	PREMISES OUTLINE.....	A-1
EXHIBIT B	PARKING LOT.....	B-1
EXHIBIT C	ANCHORAGE	C-1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Lease**") is made and entered into as of _____, 2008 ("**Effective Date**"), by and between the COUNTY OF LOS ANGELES ("**Landlord**"), as landlord, and SANTA MONICA YACHT CLUB, a California corporation, dba Santa Monica Windjammers Yacht Club ("**Tenant**"), as tenant.

RECITALS

A. Landlord owns fee title to certain land and improvements located in the Marina del Rey Small Craft Harbor and referred to herein as the Premises.

B. Landlord desires to lease to Tenant, and Tenant desire to lease from Landlord, the Premises, on and subject to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "ACCESS AREAS" shall have the meaning set forth in Section 1.2.3.

1.1.2 "ADA" shall have the meaning set forth in Section 1.2.1.

1.1.3 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.4 "ANCHORAGE" shall mean the boat slips depicted on Exhibit C attached to this Lease.

1.1.5 "ANNUAL ESTIMATE STATEMENT" shall have the meaning set forth in Section 4.4.

1.1.6 "ANNUAL RECONCILIATION STATEMENT" shall have the meaning set forth in Section 4.4.

1.1.7 "APPLICABLE LAWS" shall have the meaning set forth in Section 1.2.1.

1.1.8 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the (a) the Prime Rate plus three percent (3%) per annum; or (b) the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.1.9 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.10 **"BOARD"** shall mean the Board of Supervisors for the County of Los Angeles.

1.1.11 **"BOATER RESTROOMS"** shall mean the restroom, showers and laundry building owned by County and located adjacent to the Premises, and which is used as restrooms, showers and laundry facilities that serve the Anchorage.

1.1.12 **"BUILDING"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.13 **"BUSINESS DAY"** shall have the meaning set forth in Section 17.3.

1.1.14 **"CITY"** shall mean the City of Los Angeles, California.

1.1.15 **"CPI"** shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by Landlord and Tenant.

1.1.16 **"COUNTY"** shall mean Los Angeles County, California.

1.1.17 **"DEPARTMENT"** shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.18 **"DIRECTOR"** shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.19 **"DRY STORAGE FACILITIES"** shall mean the portion of the Premises located in the Parking Lot that are used for the dry storage of boats, as depicted in Exhibits A and B attached to this Lease.

1.1.20 **"DRY STORAGE GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.21 **"EFFECTIVE DATE"** shall mean the date set forth in the first paragraph of this Lease.

1.1.22 **"EVENTS OF DEFAULT"** shall have the meaning set forth in Section 13.1.

1.1.23 **"GROSS RECEIPTS"** shall have the meaning set forth in Section 4.3.

1.1.24 **"GROSS RECEIPTS REPORT"** shall have the meaning set forth in Section 4.3.2.

1.1.25 **"HOIST"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.26 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, walls, paving, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.27 **"LANDLORD"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.28 **"LATE FEE"** shall have the meaning set forth in Section 4.6.

1.1.29 **"LEASE"** shall mean this Lease Agreement.

1.1.30 **"LEASE YEAR"** shall have the meaning set forth in Section 2.1.

1.1.31 **"MINIMUM STANDARDS"** shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects in Marina del Rey.

1.1.32 **"MONTHLY BASE RENT"** shall have the meaning set forth in Section 4.1.

1.1.33 **"PARKING LOT"** shall have the meaning set forth in Section 1.2.4.

1.1.34 **"PERCENTAGE RENT"** shall have the meaning set forth in Section 4.2.

1.1.35 **"PERMITTED USE"** shall have the meaning set forth in Section 3.1.

1.1.36 **"PREMISES"** shall mean the land and water depicted on Exhibit A attached to this Lease and all Improvements located thereon, except any portions thereof expressly excluded from the Premises pursuant to this paragraph. For purposes of clarification, the Premises shall include the following land, water and improvements within the outline of the Premises shown on Exhibit A (the **"Premises Outline"**): (a) Tenant's existing clubhouse building (the **"Building"**) and all fixtures and utility systems and equipment located therein; (b) the sidewalks and landscaped areas included within Premises Outline; (c) the exterior patio areas located at the back of the Building and the patio/deck located on top of the Boater Restrooms (but excluding the Boater Restrooms); (d) the Dry Storage Facilities; (e) the fenced in mule storage area; (e) the boat hoist shown on Exhibit A (the **"Hoist"**) and, to the extent within the Premises Outline, the areas on which the Hoist and waterside staging area are located; and (f) the docks commonly known as G1626 and G1628. The Premises exclude the adjacent parking facilities, the Boater Restrooms, the Promenade and the Anchorage. In addition to the

Premises, Tenant has certain rights of access to other adjacent facilities in accordance with the provisions of Sections 1.2.3 and 1.2.4 of this Lease.

1.1.37 **"PREMISES OUTLINE"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.38 **"PRIMARY GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.39 **"PRIME RATE"** shall mean the prime or reference rate of interest announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. or its successor ceases to exist, then the prime or reference rate of interest announced from time to time by the largest California chartered bank in terms of deposits.

1.1.40 **"PROMENADE"** shall mean the waterfront boardwalk and promenade located adjacent or substantially adjacent to the Premises and between the Premises and the adjacent water area, including without limitation, all landscaping and improvements thereon.

1.1.41 **"PUBLIC WORKS DIRECTOR"** shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.42 **"RELOCATION FACILITY"** shall have the meaning set forth in Section 2.4.

1.1.43 **"REPLACEMENT FACILITY"** shall have the meaning set forth in Section 2.2.

1.1.44 **"SECTION"** shall mean a section of this Lease.

1.1.45 **"SECURITY DEPOSIT"** shall have the meaning set forth in Section 7.1.

1.1.46 **"STATE"** shall mean the State of California.

1.1.47 **"TENANT"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.48 **"TENANT PARTY"** shall mean any agent, officer, employee, licensee, concessionaire, permittee, subtenant, contractor, vendor, member, invitee or guest of Tenant.

1.1.49 **"TENANT'S OPERATING EXPENSES"** shall have the meaning set forth in Section 4.4.4.

1.1.50 **"TERM"** shall have the meaning set forth in Section 2.1.

1.1.51 **"TERM COMMENCEMENT DATE"** shall have the meaning set forth in Section 2.1.

1.1.52 **"TERM EXPIRATION DATE"** shall have the meaning set forth in Section 2.1.

1.1.53 **"TIME OF THE ESSENCE"** shall have the meaning set forth in Section 15.2.

1.2 **Lease.** For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases and hires from Landlord, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined), upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 **As-Is.** Tenant acknowledges that it is currently in possession of and has previously occupied the Premises pursuant to a pre-existing lease and thus is fully aware and apprised of the condition of the Premises. Tenant accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Tenant hereby represents that it has performed all investigations necessary in connection with its acceptance of the Premises **"AS IS WITH ALL FAULTS"**. Tenant hereby accepts the Premises on an **"AS IS WITH ALL FAULTS"** basis and, except as expressly set forth in this Lease, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and the Improvements included therewith, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, including all Improvements, (iv) the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or Improvements for any particular purpose, (v) the zoning or other legal status of the Premises or any public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or Improvements with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the City, County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity (**"Applicable Laws"**) or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act, as amended from time to time (**"ADA"**)), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in

any Improvements, (ix) subject to Section 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or the Improvements included therewith.

1.2.2 **Title.** Landlord represents that Landlord owns fee title to the Premises and that Landlord has authority to enter into this Lease. Tenant hereby acknowledges the title of Landlord in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Tenant may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 **Additional Access Rights.** In addition to possession of the Premises, Tenant shall have non-exclusive rights of access to the following improvements and/or areas located adjacent to the Premises (collectively, the "Access Areas"): (a) the electrical panel located in the Boater Restrooms as necessary for access to the circuit breaker for the Hoist; (b) the Boater Restrooms for use by subtenants of the Dry Storage Facilities; (c) those portions of the Parking Lot that are not included in the Premises, subject to and in accordance with terms and provisions of Section 1.2.4 below; and (d) any sidewalks, walkways and driveways located adjacent to the Premises for pedestrian access to the extent such access is both consistent with the current use of the Premises and necessary for ingress and egress to, from, among and between the Premises and the Access Areas described in clauses (a) through (c) above. Tenant's rights of access to and use of the Access Areas shall be subject to and in accordance with the following provisions: (i) Tenant's access to and use of the Access Areas shall be subject to compliance with the reasonable rules and regulations for such access and use promulgated from time to time by Landlord, including without limitation, the hours of such access and use; (ii) Tenant shall not exercise its rights under this Section 1.2.3 in any manner that interferes with, obstructs or impairs the access to, use and enjoyment of the Access Areas by Landlord or any other persons or entities to which Landlord grants rights of access or use; (iii) Tenant shall maintain liability insurance with respect to the exercise of its rights under this Section 1.2.3 in accordance with the terms of this Lease as if the Access Areas were a part of the Premises; (iv) Tenant shall have no right to make any Improvements or Alterations to the Access Areas or to place any furniture, fixtures or equipment in the Access Areas; (v) Tenant shall be solely responsible for all costs and expenses incurred by County in connection with any damage to the Access Areas or any Improvements or equipment located therein or adjacent to the Access Areas, to the extent caused by or incurred in connection with any access to or use of the Access Areas by Tenant or any Tenant Party; and (v) Tenant agrees to indemnify, defend and hold Landlord harmless from and against all liabilities, losses, damages, claims, costs and/or expenses (including reasonable attorneys' fees) incurred by Landlord as a result of or in connection with access to or use of the Access Areas by Tenant or any Tenant Party.

1.2.4 **Parking Lot.** Exhibit B attached to this Lease is a depiction of the surface parking lot located adjacent to the Building (the "Parking Lot"). The Parking Lot currently contains one hundred seventy-nine (179) parking spaces. Twenty-seven (27) of such spaces are used for the Dry Storage Facilities and are included in the

Premises. Use of an additional one hundred forty-five (145) of the parking spaces in the Parking Lot are reserved to Landlord to serve Anchorage users or for such other purposes as determined by Landlord. In addition to the Dry Storage Facilities, Landlord hereby grants Tenant a right of access to and use of the seven (7) parking spaces specifically marked for Tenant's use on Exhibit B.

The current striping plan for the Parking Lot is different than the striping plan that was originally in effect for the Parking Lot, and results in a reduction from the number of parking spaces originally contained in the Parking Lot. If the Department determines that the number of parking spaces in the Parking Lot is inadequate for the Anchorage or Premises, or if another governmental agency requires the number of parking spaces to be increased (up to and including the number of parking spaces that were originally contained in the Parking Lot), then Landlord shall re-stripe the Parking Lot in a manner acceptable to Department and/or any such governmental agency (as applicable) and Tenant shall pay to Landlord within thirty (30) days after written demand, twenty percent (20%) of the cost of such re-striping; provided, however, that no re-striping required by the Department shall restrict Tenant's ability to provide functionally equivalent dry boat storage facilities immediately adjacent to the Hoist. If Tenant desires to re-stripe the Parking Lot, then such re-striping shall be at Tenant's cost and shall be conditioned upon Landlord's prior written approval and subject to any subsequent re-striping pursuant to the preceding provisions of this paragraph. If as a result of any re-striping there is an adjustment to the location and/or number of spaces used for dry boat storage purposes, Anchorage tenants and/or the Building, then the parties shall enter into an amendment to this Lease to reflect such adjustment.

The Parking Lot shall be operated and maintained by Landlord, including the management of non-permit temporary or overnight parking and abandoned vehicles. Access to the Parking Lot shall continue to be generally controlled via a key card access system, as necessary in Landlord's judgment to limit use of the Parking Lot to Tenant's yacht club members, Anchorage tenants and as otherwise permitted hereunder. Tenant shall have the right to raise the gate arms for deliveries to the Building. Use of the parking spaces that are not included in the Premises for dry boat storage purposes shall be on a non-reserved first-come, first-served basis (subject to the limitation on the total number of spaces allocated to each party under this Section 1.2.4), except that (a) Tenant shall have the right to designate and mark (in a manner acceptable to Landlord) for exclusive yacht club use Tenant's seven (7) parking spaces described in the first paragraph of this Section 1.2.4; and (b) Landlord reserves the right to designate specific spaces for Anchorage tenants if necessary in the Landlord's judgment. Tenant shall in all cases have the right to use the Parking Lot for yacht club event purposes for up to six (6) yacht club events per year. Tenant shall use its best efforts to provide Landlord with sixty (60) days prior written notice of the date of such yacht club events to permit Landlord to notify Anchorage tenants. In no case shall Tenant provide Landlord less than forty-five (45) days' prior written notice of the date of any such yacht club event. Landlord shall have the right to use the Parking Lot for other parking purposes during non-peak times on weekdays, including evening meetings (e.g., by raising the gate arms

at Landlord's option), as long as such use does not interfere with Tenant's use of its parking rights under this Section 1.2.4.

1.2.5 **Anchorage.** The Anchorage shall be owned and operated (at Landlord's discretion) by Landlord (or its successor or designee) and Tenant shall have no rights with respect to the Anchorage, except as set forth in this Section 1.2.5. Landlord shall have the right to establish and modify from time to time the rents and any other charges (including without limitation, surcharges or additional fees for liveaboards) for use and occupancy of boat slips in the Anchorage. The remaining terms and provisions of this Section 1.2.5 shall be applicable only during such periods as the Anchorage continues to be operated and rented to individual boat slip users. Tenant shall have a first right to have its yacht club members rent vacant slips in accordance with the terms of this Section 1.2.5. Landlord shall have the right to limit the number of liveaboard boat slip tenants in the Anchorage to that number that were in legal occupancy and in good standing as of March 8, 2007.

Landlord agrees to notify Tenant in writing of all boat slip vacancies (a "Vacancy Notice") prior to the lease of a vacant slip to another user. Landlord shall have the right to deliver the Vacancy Notice during the termination notice period for the previous tenant. Tenant must exercise its first right under this Section 1.2.5, if at all, by delivery to Landlord within ten (10) days after the Vacancy Notice of a written referral of a qualified member (or members) of Tenant's yacht club for the rental of the vacant slip (or slips) referenced in the Vacancy Notice and a completed application (along with all associated forms) and rental agreement signed by such member. The application/forms and rental agreement shall be in such form as required by Landlord from time to time. Landlord and Tenant shall cooperate to agree on a procedure (a) for the preparation of a waiting list of Tenant's members (organized by slip size) who desire to rent slips, (b) the pre-qualification of such members, and (c) the delivery to County of completed applications/forms and signed rental agreements for consideration by County. All applications and prospective slip renters must satisfy the Landlord's standard conditions and qualifications for renting a slip. If County does not receive the above-required application/forms and executed rental agreement for a vacant slip from a qualified member within the foregoing ten (10) day period, then Landlord shall be free to rent such slip to any person or entity and on such terms that Landlord desires. The terms and provisions of this Section 1.2.5 shall inure only to the benefit of Tenant, and no members of Tenant shall have any rights under this Section 1.2.5 (including without limitation, as third party beneficiaries) nor shall Landlord have any obligation or liability to such members.

Tenant shall have the right to directly lease from Landlord (as opposed to having its individual members lease from Landlord) up to two (2) boat slips in the Anchorage pursuant to the right of offer set forth in this Section 1.2.5. Tenant shall have the right to sublease such two (2) boat slips to its individual yacht club members, provided that any such sublease shall be subject to Landlord's approval of the subtenant and the sublease, and Tenant shall not charge rent or other amounts in connection with such sublease that

exceed the rent and charges payable by Tenant to Landlord in connection with Tenant's direct lease of the boat slip from Landlord.

Any member of Tenant's club that rents a boat slip in the Anchorage shall have the right to permit the use of such slip on a temporary basis by a visitor to Tenant's club that is a member of another yacht club that shares reciprocal yacht club privileges with Tenant's club, without additional charge to Tenant or the visitor.

2. **LEASE TERM.**

2.1 **Term.** The term of the Lease ("Term") shall commence on _____ [INSERT THE DAY FOLLOWING THE EFFECTIVE TERMINATION DATE OF THE EXISTING LEASE] (the "Term Commencement Date") and, unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the day preceding the fifth (5th) anniversary of the Term Commencement Date (the "Term Expiration Date"). For purposes of this Lease, "Lease Year" shall mean each year during the Term of this Lease commencing on the Term Commencement Date and each successive anniversary thereof.

2.2 **Early Termination or Extension of Term in Connection with Replacement Facility.** Landlord intends to pursue consideration of the development of a replacement facility for the future occupancy of Tenant (and potentially other users) (a "Replacement Facility"). Landlord shall take into consideration input from Tenant as to the scope, size and programmatic requirements for such Replacement Facility. The development and lease to Tenant of a Replacement Facility shall be subject to compliance with any request for proposal ("RFP") process implemented by Landlord for such Replacement Facility. Subject to such RFP process, Landlord and Tenant shall negotiate in good faith to attempt to agree upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, then this Lease shall terminate effective as of the commencement of the term of the new lease to Tenant for the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, but the Replacement Facility is not completed for Tenant's occupancy of the Replacement Facility by the Term Expiration Date, then upon the mutual agreement of Landlord and Tenant the Term of this Lease shall be subject to extension for up to three (3) periods of one (1) year each.

2.3 **Early Termination for Failure to Meet Dues Threshold.** If during any Lease Year the aggregate amount of dues paid to Tenant by its members is less than One Hundred Seventy Five Thousand Dollars (\$175,000.00), then Tenant shall have the right to terminate the Lease upon not less than six (6) months prior written notice to Landlord.

2.4 **Relocation of Premises During Term.** If during the Term Landlord requires use of the Premises for another purpose (including without limitation, park or development purposes) County shall have the right during the Term to relocate the Premises to another facility of comparable size and facility improvements, and with comparable access to parking, boat slips and dry storage (a "Relocation Facility"). If County elects to relocate the Premises pursuant to

this Section 2.4, the Premises shall be relocated to the Relocation Facility on not less than sixty (60) days prior written notice to Tenant and the parties shall execute an amendment to this Lease to document the change in location of the Premises to the Relocation Facility. Landlord shall be responsible for the cost to relocate and install in the Relocation Facility Tenant's furniture, fixtures, equipment and other property.

3. **USE OF PREMISES.**

3.1 **Permitted Use.** The Premises shall be used by Tenant only for the operation of the Santa Monica Windjammers Yacht Club (or its successor pursuant to Article 14 below) and for no other purpose (the "**Permitted Use**"). Tenant shall also have the right on an ancillary basis to permit other organizations (e.g., the Coast Guard Auxiliary) to hold meetings at the Premises in a manner and frequency consistent with Tenant's past practices.

3.2 **Prohibited Uses.** Notwithstanding the foregoing:

3.2.1 **Nuisance.** Tenant shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property.

3.2.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Permitted Use of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 the Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 the Premises shall not be used in any way in a manner inconsistent with the Permitted Use; without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3 no condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Tenant shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.4 without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Tenant outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise; Landlord hereby approves Tenant's continued use of the existing antennae installed on the Premises as of the date of this Lease in the manner in which such antennae have been used prior to the date of this Lease, as long as such use does not violate any other provision of this Lease;

3.2.2.5 no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of the Permitted Use, and (b) conducted in compliance with all Applicable Laws.

3.3 **Signs and Awnings.** Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved in writing by Director (and to the extent required under then Applicable Law, the Design Control Board).

3.4 **Compliance with Regulations.** Tenant shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Tenant shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Tenant pursuant to Section 10.1 below. Landlord shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Landlord pursuant to Section 10.1 below; provided, however, that to the extent that the requirement to make an Alteration to comply with Applicable Laws is triggered by (a) any Alterations made to the Premises by Tenant, or (b) any change in the use of the Premises by Tenant, then Tenant shall be responsible for the costs and expenses incurred by Landlord for such Alteration.

3.5 **Rules and Regulations.** Tenant agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by Landlord from time to time and delivered in writing to Tenant. Any dispute as to whether Landlord has acted unreasonably in connection with the matters described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 **Reservations.** County hereby reserves an easement and right of access to and use of the exterior portions of the Premises as necessary or appropriate in the reasonable judgment of County for ingress and egress to, from, among and between the land and improvements located adjacent to the Premises, including without limitation, the Parking Facilities, Boater Restrooms,

Promenade and Anchorage. Tenant also expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, (b) otherwise referenced in this Lease in, to, over or affecting the Premises, or (c) consented to by Tenant.

Without limiting the foregoing, Tenant expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of the City or County to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of the City or County to convey such easements and transfer such rights to others.

4. **RENT AND OTHER PAYMENTS.**

4.1 **Base Rent.** Tenant shall pay Landlord base rent ("**Monthly Base Rent**") during the Term. The Monthly Base Rent for the first Lease Year shall be Eight Thousand Dollars (\$8,000.00) per month. The Monthly Base Rent shall be subject to adjustment effective as of the first day of the second and each successive Lease Year during the Term to an amount equal to the product of (a) the Monthly Base Rent in effect for the first Lease Year, multiplied by (b) a fraction the numerator of which is the CPI for the month that is three (3) months prior to the month during which the Monthly Base Rent adjustment is to take effect, and the denominator of which is the CPI for the month that is three (3) months prior to the month during which the Term Commencement Date occurs. Notwithstanding the foregoing, (i) in no event shall the Monthly Base Rent for any Lease Year be less than the Monthly Base Rent in effect for the immediately preceding Lease Year; and (ii) in no event shall the Monthly Base Rent for any Lease Year exceed the Monthly Base Rent in effect for the first Lease Year increased at a cumulative and compounded annual rate of three percent (3%) per year during the Term.

4.2 **Percentage Rent.** In addition to Monthly Base Rent, Tenant shall pay to Landlord percentage rent ("**Percentage Rent**") equal to the sum of (a) seven and 35/100 percent (7.35%) of the first Three Hundred Ninety Thousand Dollars (\$390,000.00) of Primary Gross Receipts (as defined below) for each Lease Year, plus (b) seventeen and 50/100 percent (17.5%) of all Primary Gross Receipts for each Lease Year in excess of Three Hundred Ninety Thousand Dollars (\$390,000.00), plus (c) twenty-five percent (25%) of Dry Storage Gross Receipts (as defined below). For purposes of this Lease, (a) "**Primary Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Premises, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar receipts, telephone/vending receipts, mail box charges, locker rentals and production/filming receipts, but excluding Dry Storage Gross Receipts; and (b) "**Dry Storage Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Dry Storage Facilities or storage lockers.

4.3 **Gross Receipts.** For purposes of this Lease, "**Gross Receipts**" means the gross amount of all money, receipts, dues, commissions, charges, fees, payments, reimbursements,

compensation, accounts or notes receivable or other things of value, received by or payable to Tenant (and/or any assignee, subtenant, licensee, permittee or concessionaire, although this section shall not be interpreted to permit any use, occupancy or operation of the Premises by any person or entity other than Tenant) from or in connection with the use, occupation or operation of any activity or business on the Premises or in any Access Areas, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

4.3.1 **Calculation of Gross Receipts.** In the calculation of Gross Receipts, the following shall be applicable:

(1) There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent, utilities, credit card fees, insurance premiums and taxes.

(2) Gross Receipts shall not include and retail sales tax imposed upon the consumer, collected by Tenant and remitted by Tenant to the applicable governmental agency.

(3) Gross Receipts must include the usual charges for any services, goods, rentals or facilities. Bona fide bad debts actually accrued by Tenant for delinquent payables owed to Tenant may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously excluded from Gross Receipts shall be included in Gross Receipts in the Lease Year in which they are collected.

(4) Gross Receipts shall not include any of the following items:

a. refunds to members or customers on merchandise sold to such members or customers and returned to Tenant;

b. sales of fixtures, equipment or property which are not Tenant's stock in trade;

c. receipts from insurance claims other than proceeds related to the replacement of Gross Receipts; and

d. interest earned by Tenant on funds arising from the Premises or the use thereof, deposited or maintained by Tenant in banks or similar financial institutions.

(5) Interest, service or late charges collected in conjunction with a transaction, sale or activity shall be included in Gross Receipts in the same percentage category as the underlying transaction, sale or activity is required to be reported.

(6) Although Tenant has no right to sublease the Premises or any portion thereof, or to permit any licensee, concessionaire or other person or entity to occupy, use or conduct any business or activity on the Premises or Access Areas, if any person or entity other than Tenant occupies, uses or conducts any business or activity on or from the Premises or Access Areas, the Gross Receipts of such subtenant, licensee, concessionaire or other person or entity from such business or activity shall be included in Gross Receipts.

(7) Gross Receipts shall not include receipts from charity events held on the Premises provided that (a) such events are conducted only on an ancillary basis and are consistent in scope and frequency with Tenant's past practices; (b) the recipient of the receipts from the event is a bona fide charitable organization (based on federal income tax status) that is not affiliated with Tenant or any subtenant and whose operation and mission are not related to boating, sailing or other marina activities; and (c) all receipts from the event (after offset of bona fide out-of-pocket expenses, without compensation to Tenant) are donated to a qualified recipient under clause (b) above. Tenant shall provide Landlord with such information and materials as requested by Landlord to permit Landlord to verify the application of this subsection (7).

(8) Director, by Policy Statement and with the approval of Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the calculation of Percentage Rent.

4.3.2 Reporting of Gross Receipts and Payment of Percentage Rent.

Within fifteen (15) days after the end of each calendar month (or partial calendar month) during the Term, (a) Tenant shall deliver to Landlord a written report ("**Gross Receipts Report**") that sets forth the Primary Gross Receipts and Dry Storage Gross Receipts for such immediately preceding month and the aggregate Primary Gross Receipts and Dry Storage Gross Receipts to date for the then current Lease Year, in such form and detail as reasonably acceptable to Landlord, and (b) pay to Landlord Percentage Rent payable for the Primary Gross Receipts and Dry Storage Gross Receipts for the immediately preceding month. The monthly payments of Percentage Rent for Primary Gross Receipts shall be equal to seven and 35/100 percent of Primary Gross Receipts until the aggregate Primary Gross Receipts for such Lease Year exceed Three Hundred Ninety Thousand Dollars (\$390,000.00), following which Percentage Rent for Primary Gross Receipt shall be payable at the rate of seventeen and 50/100 percent (17.5%) of such Primary Gross Receipts for the remainder of such Lease Year. Tenant shall comply with all recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Landlord, set forth in Article 14 of this Lease.

4.4 **Net Lease.** All references to "rent" under this Lease shall mean the Monthly Base Rent, Percentage Rent or other amounts payable by Tenant to Landlord under this Lease. The parties acknowledge that the rent to be paid by Tenant under this Lease is intended to be

absolutely net to Landlord. The rent and other sums to be paid to Landlord hereunder are not subject to any credit, demand, set-off or other withholding.

4.4.1 **Utilities.** In addition to rent, Tenant shall pay, or cause to be paid, to County or the utility provider (as applicable), all utility and service charges for water, electricity or other power, gas, sewage disposal, telephone service, cable service, garbage and trash collection and other utilities and services to the Premises. If any utilities are not separately metered or submetered, Tenant shall pay to County the cost of the utilities reasonably allocated to the Premises.

4.4.2 **Insurance.** Tenant shall pay to County the cost of all insurance maintained by County with respect to the Premises. The cost of any insurance that pertains to the Premises and other property owned by County shall be apportioned between the Premises and such other property on a reasonable basis.

4.4.3 **Taxes and Assessments.** Tenant shall prior to delinquency all taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or other levying body upon any interest in this Lease or any possessory right which Tenant may have in or to the Premises allocable to the Term of this Lease, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Tenant shall have the right to contest the amount of any assessment imposed against the Premises or its possessory interest therein; provided, however, all costs and expenses of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Tenant. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. The possessory interest taxes and any other taxes applicable to the Premises or Tenant's interest in this Lease shall be pro-rated for any partial tax years included in the Term.

4.4.4 **Expenses Relating to Access Areas and Promenade.** Tenant shall pay to County twenty percent (20%) of all direct variable expenses incurred by Landlord for insurance, utilities, trash removal, maintenance, repair, landscaping and other common area services or costs attributable to the Access Areas, the Promenade, any other exterior common areas and the Common Water Heater (the "Tenant's Operating Expenses"). If expenses are incurred with respect to both the areas described in the immediately preceding sentence and other areas owned by County, such expenses shall be apportioned between the areas described in the immediately preceding sentence and such other areas on a reasonable basis. Prior to the commencement of each Lease Year, Landlord shall deliver to Tenant a statement setting forth Landlord's good faith estimate of Tenant's Operating Expenses projected to be incurred for the ensuing Lease Year (the "Annual Estimate Statement"). On or before the first day of each month during each Lease Year, Tenant shall pay to Landlord Tenant's Operating Expenses on an estimated basis in an amount equal to one-twelfth (1/12) of the estimated amount set forth in the

Annual Estimate Statement for such Lease Year. No delay or failure of Landlord to deliver the Annual Estimate Statement shall relieve Tenant of its obligations under this Section 4.4.4, except that until Landlord has delivered the Annual Estimate Statement for a Lease Year Tenant shall continue to pay monthly estimated installments of Tenant's Operating Expenses based on the estimate set forth in the Annual Estimate Statement for the preceding Lease Year. Within ninety (90) days after the end of each Lease Year, Landlord shall deliver to Tenant a statement (the "**Annual Reconciliation Statement**") setting forth the actual amount of Tenant's Operating Expenses for the preceding Lease Year. In the event that the monthly estimated amounts of Tenant's Operating Expenses paid by Tenant for such Lease Year are less than the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall pay the difference to Landlord within thirty (30) days after receipt by Tenant of the Annual Reconciliation Statement. In the event that the monthly estimated amounts paid by Tenant for such Lease Year exceed the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall be entitled to credit the difference against the next rent payable to Landlord under this Lease, or, in the case of the final Lease Year, any such overpayment shall be returned to Tenant concurrent with the delivery by Landlord of the Annual Reconciliation Statement. Landlord shall not be in default or liable to Tenant for a delay in the delivery of the Annual Reconciliation Statement, but any overpayments by Tenant on an estimated basis shall bear interest at the Prime Rate during any period of delay in the delivery by Landlord of the Annual Reconciliation Statement.

4.5 **Rent Payments.** Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant in advance on or before the first (1st) day of each calendar month of the Term. If the Term Commencement Date does not occur on the first day of a calendar month, then the first payment of Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant on or before the Term Commencement Date, and the Monthly Base Rent and Tenant's Operating Expenses for the first and last partial months during the Term shall be calculated on a pro rata basis based on the number of days in each such partial month as compared to the total number of days in the applicable calendar month during which such partial month occurs.

Percentage Rent for each month (or partial month) during the Term shall be paid by Tenant in arrears on or before the fifteenth (15th) day of the following month in accordance with Section 4.3.2 above.

All payments under this Lease shall be by check or draft issued and payable to the County of Los Angeles, delivered to the Department of Beaches and Harbors, Los Angeles, California, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Tenant by Landlord from time to time. Tenant acknowledges that Landlord shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Tenant has received no such statement, invoice or demand.

4.5 **Late Fees.** If any payment under this Lease is not received by Landlord by the date due, Tenant acknowledges that Landlord will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine.

Therefore, a fee ("**Late Fee**") of six percent (6%) of the unpaid amount shall be payable with respect to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Tenant shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Tenant within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from Landlord. In addition to any Late Fee, any unpaid amounts shall additionally bear interest at the Applicable Rate, computed from the date such amount was due and payable, compounded monthly, until paid. Tenant acknowledges that such Late Fee and interest shall be applicable to all monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on any unpaid amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by Landlord).

5. **IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.**

5.1 **Ownership of Improvements.** All Improvements included in the Premises and all Alterations (as defined below) thereto shall be owned by Landlord, and Tenant shall have only a leasehold interest therein pursuant to this Lease; provided, however, during the Term Tenant shall be considered as the owner of the Hoist and shall be fully and solely responsible for the operation, maintenance, repair and/or replacement (as necessary) of the Hoist. Tenant shall have no right to remove the Hoist from the Premises, except if Tenant replaces the Hoist with a new replacement hoist acceptable to County. At the expiration or earlier termination of the Term, ownership of the Hoist shall automatically transfer to County.

5.2 **No Alterations Without Approval of Landlord.** Tenant shall not make any additional improvements, modifications, installations or other alterations (collectively, "**Alterations**") of, on or to the Premises or any utility or other systems serving the Premises, without the prior written consent of Landlord, which consent may be withheld or conditioned by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, on prior written notice to Landlord, but without requiring Landlord's consent, Tenant shall have the right to make cosmetic alterations to the interior of the Building (such as paint and carpet) as long as such alterations do not reduce the value of the Building, affect the utility systems serving the Building, or cost in excess of an aggregate of Ten Thousand Dollars (\$10,000.00).

5.3 **Protection of Landlord.** Nothing in this Lease shall be construed as constituting the consent of Landlord, express or implied, to the performance of any labor or the furnishing of any materials to the Premises by any contractor, subcontractor, laborer or materialman, in such manner as would give rise to the filing of mechanics' liens or other claims against Landlord or Landlord's interest in the Premises.

5.3.1 **Posting Notices.** Landlord shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord's interest in the Premises from mechanics' liens or other claims.

5.3.2 **Liens; Indemnity.** Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Tenant and/or any parties claiming through Tenant. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any claims, liability, losses, damages, costs, expenses (including without limitation, attorneys' fees) incurred in connection with any claims of liens of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded, Tenant shall, within five (5) business days after demand, satisfy or otherwise cause such lien to be removed of record, whether by bonding or otherwise.

5.4 **Surrender of Possession at Termination of Lease.** At the expiration of the Term or sooner termination of this Lease, (a) Tenant shall surrender possession of the Premises to Landlord in the condition that such Premises was required to be maintained and repaired by Tenant under this Lease, and (b) Tenant shall remove from the Premises all unaffixed furniture, equipment and other personal property owned by Tenant, and repair any damage to the Premises incurred in connection with such removal. If Tenant fail to remove its personal property from the Premises as required under this Section 5.4, then Tenant shall lose all right, title and interest in and to such personal property, and Landlord may elect to keep the same upon the Premises or to sell, remove, or destroy the same, in event of which sale, removal, or destruction Tenant shall reimburse Landlord for its costs incurred in connection with such sale, removal or destruction in excess of the consideration, if any, received by Landlord as a result of the sale of any such personal property.

6. **CONDEMNATION.** In the event that more than ten percent (10%) of the floor area of the Building, or such portion of any other areas of the Premises or Parking Lot that prevents the occupancy or operation of the remaining portion of the Premises, is taken by eminent domain or condemnation, then either Landlord or Tenant shall have the option of terminating this Lease upon giving written notice of such election to the other within thirty (30) days after receipt of written notice of such taking. If the Lease is not terminated, then Monthly Base Rent shall be equitably reduced on a reasonable basis to reflect the relative value to Tenant of the portion of the Premises that is taken. The entire condemnation award shall belong to Landlord, except that Tenant shall be entitled to the portion of any award, if any, allocated by the condemning authority to the taking of or damage to Tenant's personal property or relocation expenses.

7. **SECURITY DEPOSIT.**

7.1 **Amount and Use.** Tenant shall deliver to and maintain with Landlord a security deposit (the "Security Deposit") in an initial amount equal to Thirteen Thousand Dollars (\$13,000.00). Effective as of each date that the Monthly Base Rent is increased under Section 4.1 of this Lease, the amount of the Security Deposit shall be increased by the same percentage

increase as the percentage increase in the Monthly Base Rent. The Security Deposit shall secure Tenant's obligations pursuant to this Lease, and may be drawn on by Landlord, in whole or in part, to cover (a) delinquent rent not paid by Tenant within any applicable notice and cure period, and (b) any other Events of Default of Tenant under this Lease. The Security Deposit shall be applied at the discretion of Landlord. Tenant shall have the right to maintain the Security Deposit either in the form of cash, or in the form of a certificate of deposit, letter of credit or other approved investment instrument issued with Landlord as the sole owner or beneficiary, in each case acceptable to Landlord in form, content and issuer. As long as no Event of Default by Tenant exists under the Lease, Tenant shall be entitled to a credit for any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to Landlord in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Tenant shall not be entitled to interest). Notwithstanding any contrary provision hereof, Landlord shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Tenant under the Lease.

7.2 **Replacement.** In the event that some or all of the Security Deposit is drawn against by Landlord and applied against any delinquent rent not paid by Tenant within any applicable notice or cure period, or against other Events of Default of Tenant hereunder, Tenant shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with Landlord, or cause the issuer of any letter of credit to reissue the letter of credit, such that Tenant once again maintains the full amount of the Security Deposit required under this Article 7. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Section 13.1.2, shall constitute an Event of Default hereunder.

7.3 **Renewal.** Any letter of credit procured by Tenant and delivered to Landlord shall provide for notice to Landlord by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Tenant has not provided Landlord with satisfactory evidence of its renewal or replacement, or has not provided Landlord with adequate replacement security, Landlord may draw down upon the letter of credit and hold the funds as security for Tenant's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Tenant within any applicable notice and cure period and/or any other Event of Default of Tenant under this Lease.

8. **INDEMNITY.**

Except to the extent caused by the gross negligence or willful misconduct of any indemnitee, Tenant shall at all times relieve, defend, indemnify, protect, and save harmless Landlord and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Tenant and reasonably satisfactory to Landlord, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Landlord or any of

its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Tenant or any Tenant Party, (b) the acts, omissions, or negligence of Tenant or any Tenant Party, or (c) the failure of Tenant or any Tenant Party to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Tenant to so relieve, defend, indemnify, protect, and save harmless Landlord and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Tenant beyond the expiration of the Term or other termination of this Lease.

9. **INSURANCE.**

9.1 **Tenant's Insurance.** Without limiting Tenant's indemnification of Landlord, during the Term of this Lease Tenant shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name Landlord as an additional insured, with respect to the Premises and Access Areas, with limits of not less than the following:

General Aggregate:	\$10 million
Products/Completed Operations Aggregate:	\$10 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$5 million

Tenant may satisfy the above coverage limits with a combination of primary coverage and excess liability/umbrella coverage as long as (a) Tenant's primary coverage is at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) annual aggregate, which limits may, at Tenant's election, be carried in the form of two separate policies, (b) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to Landlord, and (c) the combination of such primary coverage and excess liability/umbrella coverage provides Landlord with at least the same protection in all respects as if Tenant had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

9.1.2 If any vehicles are owned or operated by or on behalf of Tenant, Tenant shall maintain Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." In all cases Tenant shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$1 million for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Tenant is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

9.1.4 Commercial Property insurance covering damage to the Improvements, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than \$5,000, and also including business interruption, including loss of rent, equal to two (2) years annual rent. Landlord shall be named as insured party and loss payee of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Tenant or Tenant's contractor will provide the following insurance (Landlord reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including Landlord furnished materials and equipment, against loss or damage until completion and acceptance by Tenant. Landlord shall be named as insured party and loss payee

of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the Landlord for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the Landlord from the date the Alterations are completed and accepted by the Tenant.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as required by the Landlord for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits as required by the Landlord for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as required by the Landlord for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000). If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 **Provisions Pertaining to Property Insurance.** The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the Landlord as the insured party and loss payee with respect to the coverage pertaining to the Improvements (as opposed to Tenant's personal property) and name Landlord as an additional insured with respect to loss or rent coverage.

9.3 **General Insurance Requirements.** Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to Landlord, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Tenant prior to the commencement of any Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Tenant and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Tenant may submit in a form reasonably acceptable to Landlord a certificate of insurance from the insurance company (but not from an insurance broker) that is legally binding upon such insurance company.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Landlord such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 **Additional Required Provisions.** Tenant's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that Landlord and its respective Board of Supervisors and members thereof, and Landlord's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of the additional insured which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against Landlord and its respective Board of Supervisors and members thereof, and Landlord's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to Landlord or ten (10) business days in case of cancellation for failure to pay the premium;

(g) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(h) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 **Failure to Procure Insurance.** If Tenant fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from Landlord, in addition to the other rights and remedies provided hereunder, Landlord may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Landlord shall be repaid by Tenant, with interest thereon at the Applicable Rate, to Landlord within five (5) business days after Tenant's receipt of written demand therefor.

9.6 **Adjustment to Amount of Liability Coverage.** The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"). If Landlord and Tenant cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 **Notification of Incidents, Claims or Suits.** Tenant shall report to Landlord any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Tenant and/or Landlord. Such report shall be made in writing within 72 hours of Tenant's knowledge of such occurrence.

10. **MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.**

10.1 Allocation of Maintenance and Repair Obligations. Tenant shall be fully responsible for the maintenance and repair of the interior of the Building (including exterior windows and doors) and all fixtures and utility systems and equipment located therein, except for structural elements, the roof, and heating, ventilation and air conditioning, and elevator systems. Landlord shall be responsible for the maintenance and repair of the structural elements, roof, heating, ventilation and air conditioning and elevator systems and exterior of the Building (excluding exterior windows and doors). Tenant shall be responsible for the maintenance and repair of the patio and other exterior surface and landscaped areas included in the Premises, the Dry Storage Facilities, the fenced in mule storage area, the Hoist and any Hoist/waterside staging areas included in the Premises. Tenant shall be responsible for any damage or degradation to the leak-free condition of the roof membrane of the Boater Restrooms arising in connection with Tenant's use of the patio above the Boater Restrooms. Landlord shall be responsible for the maintenance and repair of the portion of the Parking Lot that is not included in the Premises and the other Access Areas (including without limitation, the Boater Restrooms).

Landlord shall also be responsible for the maintenance and repair of docks G1626 and G1628. In consideration of Landlord's maintenance and repair of docks G1626 and G1628, Tenant shall pay to Landlord on a monthly basis concurrent with its payment of Monthly Base Rent, a maintenance and repair fee equal to twenty-five percent (25%) of the monthly boat slip rental rate charged from time to time for boat slips in the Anchorage of a size comparable to G1626 and G1628. Tenant shall also be required to reimburse Landlord for the cost of any maintenance, repair or replacement of docks G1626 and G1628 necessitated by the act or omission of Tenant or any Tenant Party.

A common water heater (the "**Common Water Heater**") that serves the Premises and the Boater Restrooms is located in an exterior closet in the Building. Landlord shall be responsible for the maintenance, repair and replacement (as necessary) of the Common Water Heater. Tenant shall provide Landlord with access to the Common Water Heater (including keys to the closet). Tenant shall be required to reimburse Landlord for its share of the costs incurred by Landlord for the maintenance, repair and replacement (as necessary) of the Common Water Heater as a part of (and in accordance with the same Tenant's percentage share as) Tenant's Operating Expenses. If Landlord fails to commence the remedy of any malfunction of the Common Water Heater within five (5) business days after written notice from Tenant, then Tenant shall have the right to perform the required repair or replacement on written notice to Landlord and to offset Landlord's share of the reasonable cost incurred by Tenant for such repair or replacement (i.e., 80%) against the next rent payable under this Lease.

Tenant shall perform its maintenance and repair obligations (a) at its sole cost and expense, (b) such that the portions of the Premises and associated areas required to be maintained and repaired by Tenant are kept in a good, safe, clean and working order and condition, (c) in compliance with all Applicable Laws, and (d) in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Marina del Rey as revised from time to time by Landlord in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the

Landlord from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. Landlord in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1.

Landlord's repair and maintenance obligations under this Section 10.1 shall be at Landlord's cost, except (i) for those items included within Tenant's Operating Expenses pursuant to Section 4.4; (ii) Landlord shall not be responsible for exterior Building painting unless Tenant agrees to reimburse Landlord for the direct variable cost of such painting, provided that if the Term is extended beyond the initial five (5) year Term and in the Department's judgment the Building requires painting, then Landlord shall have the right to require Tenant to pay for the direct variable cost of such painting as part of the agreed upon terms for the extension of the Term; (iii) Tenant shall be required to varnish the exposed wood rail caps at least once every two (2) years; (iv) Tenant shall be responsible for the cost of any repair necessitate by the act or omission of Tenant or a Tenant Party; and (v) as provided above with respect to docks G1626 and G1628 and the Common Water Heater.

Landlord shall not have any direct or indirect liability to Tenant (including, without limitation, consequential damages or any right to abate, withhold or offset rent) for any malfunction or interruption in operation of the items required to be repaired and maintained by Landlord under this Lease or for any interference with Tenant's operations resulting therefrom or in connection with the performance of Landlord's maintenance and repair obligations under this Lease. Except as expressly provided to the contrary in this Lease, Tenant shall not have the right to perform any work on Landlord's behalf or to offset any costs, expenses or other amounts against rent.

10.2 Maintenance Deficiencies. If Landlord provides written notice to Tenant of a deficiency or other breach in the performance by Tenant of the maintenance and repair obligations of Tenant under Section 10.1 above, then Tenant shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the Landlord's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case Landlord shall have the right to immediately require Tenant to take all appropriate steps to avoid damage or injury. If Tenant fails to cure any such deficiency within the cure period set forth in Landlord's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that Landlord may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Tenant shall pay to Landlord an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in Landlord's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Tenant), then as long as during the specified cure period Tenant commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such

Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

12. ENCUMBRANCES

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "Financing Event" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "Ownership Interests"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of subsection 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "Encumbrance" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "Encumbrance Holder") as security for a loan. The term "Encumbrance Holder" shall also be deemed to include any successors and assigns of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or any designee which has been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted to Encumbrance Holders under this Lease. The term "Equity Encumbrance Holder" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Events. Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents, then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 of this Lease.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "Excluded Defaults"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any recapture right on the part of County, or (iii) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction work described in Sections 5.1, 5.14 or 5.15 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations

afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (except with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination (other than a termination with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable; and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent

simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same

thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, except in each case other than the partial termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that

are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance (except for easements or other matters to which this Lease is subject) on County's fee interest in the Premises (except for easements or other matters to which this Lease is subject), and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Capital Improvement Fund or Renovation Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1. Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease, within five (5) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2. Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3. Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4. Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5. Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1. Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages.

13.3.2. Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3. Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1. Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2. Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3. Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for

thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by County; notwithstanding the foregoing, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval will not be unreasonably withheld.

The requirements of this paragraph may be waived or modified in advance by Director upon submission by Lessee of a substitute plan acceptable to Director for recording sales and other income.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required shall be kept or made available at the Premises or at another location

within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1. Entry by County. County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major office buildings and major parking service companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 Accounting Year. The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and

methodology of accounting records and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of _____ Dollars (\$_____) toward those costs. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Execution Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1. Disclosures and Waiver.

15.4.1.1. "AS IS" Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1966. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease; at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary;

including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2. Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3. Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4. California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

Lessee's Initials

15.4.2. Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent in effect at the end of the Term shall be increased to one hundred twenty five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over

shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY: Director
Department of Beaches and Harbors
Los Angeles County
13837 Fiji Way
Marina del Rey, California 90292
Phone: 310/305-9522
Fax: 310/821-6345

With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Attn: County Counsel
Phone: 213/974-1801
Fax: 213/617-7182

LESSEE: Holiday-Panay Way Marina, L.P.
c/o Goldrich & Kest Industries
5150 Overland Avenue
Culver City, California 90230
Attn: Warren Breslow
Phone: 310/204-2050
Fax: 310/204-1900

With a Copy to: Holiday-Panay Way Marina, L.P.
c/o Goldrich & Kest Industries
5150 Overland Avenue
Culver City, California 90230
Attn: William Yerrick, General Counsel
Phone: 310/280-5043
Fax: 310/280-5014

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable immediately upon demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation attorneys' fees for County Counsel's services where County is

represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than an amendment to implement an arbitration judgment and other than an amendment to confirm the termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or an affirmative vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is necessary in order to secure such affirmative vote or approval and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (1) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (2) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); (3) the dates, if any, to which all rental due thereunder has been paid; and (4) whether the certifying party is then aware of any charges, offsets or defenses against the enforcement by the other party of any agreement, covenant or condition hereof to be performed or observed by the certifying party (and, if so, specifying the same). Prospective purchasers and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Waterfront Promenade. As a part of the Redevelopment Work, Lessee agrees to (i) provide a continuous pedestrian walkway and view piers approved by County ("Promenade")

along the entire waterfront portion of the Premises to comply with the intent of the Local Coastal Program's waterfront promenade plan, (ii) replace all fencing on the Premises with new fencing approved by County, (iii) repave all parking areas, and (iv) complete new or refurbished restrooms for the anchorage tenants. The foregoing work is collectively referred to in this Lease as the "Promenade Work." Lessee shall perform the Promenade Work as part of the Redevelopment Work. The facilities to be constructed under this Section 15.19 shall be constructed in accordance with the provisions of Article 5. Lessee shall join the Promenade located on the Premises with the adjacent promenade located on Parcel 20 and repair any damage to the promenade improvements located on Parcel 20 incurred in connection with Lessee's construction of the Promenade under this Lease. County hereby reserves a public easement for access over and use of the Promenade for pedestrian purposes and such other related uses (including, if approved by County bicycling, rollerblading and the like) as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with maintenance and repair standards established by the County from time to time. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of this Lease. At the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.20 Parking.

15.20.1 General. As part of the Redevelopment Work Lessee is required to construct the Parking Structure described in Section 5.1 of this Lease. It is contemplated that the New Commercial Building and the new Anchorage Improvements will require the construction of 241 parking spaces. The exact number of parking spaces required by applicable code to serve the New Commercial Building and the new Anchorage Improvements is referred to herein as the "On-Site Parking Spaces." In addition to the On-Site Parking Spaces, Lessee shall construct 112 parking spaces to serve the anchorage improvements located on Parcel 20 (the "Additional Parcel 20 Parking Spaces") and 94 public parking spaces to satisfy replacement public parking required to be constructed in connection with the development of Parcel 147 (the "Replacement Parcel 147 Parking Spaces") to the extent that the requirement for the Replacement Public Parking Spaces is not eliminated or reduced in connection with receipt of the entitlements and governmental approvals required for the development of Parcel 147. The 447 parking spaces required to be contained in the Parking Structure pursuant to Section 5.1 is based on the foregoing parking requirements. If the required number of On-Site Parking Spaces and/or Replacement Parcel 147 Parking Spaces changes, then the total number of parking spaces required to be contained in the Parking Structure shall be adjusted to reflect any such change. The Parking Structure shall be designed and constructed at the sole cost of Lessee. Any cost sharing agreement that Lessee, the Parcel 147 Lessee and/or the Parcel 20 Lessee may have entered into with respect to the cost of the design and construction of the Parking Structure shall be a matter as between Lessee and such other lessees, and shall not limit or otherwise affect Lessee's obligations to County with respect to the

construction of the Parking Structure. County shall have no obligation with respect to the cost of the design and construction of the Parking Structure.

15.20.2 Additional Parcel 20 Parking Spaces. County hereby reserves a non-exclusive, irrevocable easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Additional Parcel 20 Parking Spaces for parking purposes for the benefit of the anchorage improvements located on Parcel 20. Lessee shall not have the right to charge County, the Parcel 20 Lessee or any Designee (as defined below) for the use of the parking set forth in this subsection 15.20.2, except that during any period during which Parcel 20 continues to be leased to Parcel 20 Lessee, Lessee and such Parcel 20 Lessee shall have the right to mutually agree to a parking charge for the use of the Additional Parcel 20 Parking Spaces, but such charge shall not be binding on County on and after any termination of the lease for Parcel 20 in effect as of the date of this Lease. The Additional Parcel 20 Parking Spaces shall be in a location approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs, or such other location as approved by Director from time to time. The users of the Additional Parcel 20 Parking Spaces shall have access to and use of the Additional Parcel 20 Parking Spaces 24 hours per day, every day, in accordance with the Operation Plan approved by Director pursuant to subsection 15.20.4 below. The easement described in this subsection 15.20.2 shall run for the benefit of County, as fee owner of the portion of Parcel 20 on which the anchorage improvements are located, and any Parcel 20 Lessee, as lessee of such portion of Parcel 20. The Parcel 20 Lessee (or County if there is no Parcel 20 Lessee) shall have the right to designate users of the anchorage improvements located on Parcel 20 (including visitors) as permitted users of the parking rights set forth in this subsection 15.20.2 ("Designees"), but this subsection 15.20.2 is not intended to confer any rights (including, without limitation, rights to enforce this subsection 15.20.2 as a third party beneficiary) on any third parties, including any such Designee. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the parking rights set forth in this subsection 15.20.2. Parcel 20 Lessee shall indemnify, defend and hold Lessee harmless from and against all claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) incurred by Lessee for the death of or injury to persons or damage to property, arising in connection with or related to the use of the easement described in this subsection 15.20.2 by Parcel 20 Lessee or its Designees.

15.20.3 Replacement Parcel 147 Parking Spaces. County hereby reserves a public easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Replacement Parcel 147 Parking Spaces for public parking purposes. The location of Replacement Parcel 147 Parking Spaces and the access ways and circulation plan for public use of the

Replacement Parcel 147 Parking Spaces shall be approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs. The Replacement Parcel 147 Parking Spaces shall be open to the public seven (7) days per week in accordance with such rules and regulations (including hours of public access) as are promulgated from time to time by County regulating such public use. Lessee shall make no use of the Premises, including without limitation the other parking located thereon, that interferes with the public easement described in this subsection 15.20.3 or is prohibited under or in conflict with the rules and regulations established by County for the use of the Replacement Parcel 147 Parking Spaces. County shall not be obligated to pay Lessee any compensation for the Replacement Parcel 147 Parking Spaces. Lessee shall have the right to charge the users of the Replacement Parcel 147 Parking Spaces for the use thereof in accordance with rates approved by County (with California Coastal Commission approval as required under Applicable Law) consistent with the public parking rates established (as modified from time to time) for other similar public parking in Marina del Rey. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the public parking rights set forth in this subsection 15.20.3.

15.20.4 Parking Structure Operation Plan. Not later than ninety (90) days prior to the opening of the Parking Structure, Lessee shall submit to Director for Director's approval, a plan for the operation of the Parking Structure (the "Operation Plan"), including without limitation, hours of operation, access procedures, security, parking charges (if any) and other specifications pertaining to the operation of the Parking Structure. Lessee shall be obligated to operate, maintain and repair the Parking Structure at its sole cost and expense, in accordance with a standard of operation, repair and maintenance at least commensurate the standard of operation of other comparable first-class parking facilities in Marina del Rey. Lessee shall operate the Parking Structure in accordance with the Operation Plan, as approved by Director, and shall make no modifications to such Operation Plan without the prior written approval of Director.

15.21 Dockmasters. Throughout the Term, Lessee shall maintain a dockmaster program acceptable to County to manage Lessee's anchorage at the Premises. Such dockmaster system may be jointly operated with the anchorage for Parcels 18 and 20.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to the Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the Effective Date have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the

required period, or such reasonable extension thereof as may be granted in the Director's sole discretion, shall be ineligible for continued slip tenancy on the leasehold premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.24 No Merger. If, prior to the expiration of the Term, County or Lessee shall acquire the interest of the other in the Promises, or any portion thereof, there shall be no merger of the leasehold estate into (a) the fee simple estate in the Premises, (b) the sub-reversionary interest held by County or (c) any leasehold estate superior to that held by Lessee.

15.25 365 Election. County and Lessee agree, for the benefit of any Encumbrance Holder, that for so long as an Encumbrance shall encumber Lessee's interest in the Premises, the right of election arising under Section 365(h)(1) of the Bankruptcy Code may be exercised solely by Encumbrance Holder and not by Lessee. Any exercise or attempted exercise of such right of election by Lessee shall be void.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" he shall follow the format described for the

Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(a) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(b) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(1) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(2) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(3) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(c) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(1) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(2) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(3) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(4) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written



To enrich lives through effective and caring service

February 7, 2008



Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **ITEM 5a - APPROVAL OF LEASE AGREEMENT – SANTA MONICA WINDJAMMERS YACHT CLUB-PARCEL 47 (13589 MINDINAO WAY) - MARINA DEL REY**

Item 5a on your agenda pertains to a new 5-year lease between the County of Los Angeles and the Santa Monica Windjammers Yacht Club (Yacht Club). The Yacht Club is a sublessee of the Parcel 47 lessee (SMYC Marina) and the County lease with SMYC Marina is terminating effective March 24, 2008. To retain the Yacht Club in their current facilities, we are proposing a 5-year lease agreement.

The new lease agreement allows the Yacht Club to use the existing yacht club building and other appurtenant areas on Parcel 47, including the use of seven reserved parking spaces and 27 dry boat storage spaces for the benefit of its yacht club members. Additionally, the intent of the lease agreement is to provide time for the County to design and develop an expanded Chace Park wherein we intend to provide facilities for the Yacht Club.

The Board of Directors of the Yacht Club met on February 5, 2008 and voted to recommend to the members of the Yacht Club ratification of the negotiated lease. The members of the Yacht Club will hold a special meeting on February 16, 2008 to vote on the ratification of said lease.

Attached is a copy of the Board letter that explains the details of the proposed transaction. The exhibits to the Board letter include a copy of the proposed lease. Your Commission's endorsement of the Chief Executive Office recommendations to the Board of Supervisors is respectfully requested.

SW:SHK:dlg.shk

Attachment

March 4, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF LEASE
AGREEMENT- SANTA MONICA WINDJAMMERS YACHT CLUB
(Parcel 47 at 13589 Mindanao Way) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the recommended actions is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Authorize the Director to enter into County agreements to retain the yacht club subtenant (Santa Monica Yacht Club, Inc., dba Santa Monica Windjammers Yacht Club) and slip tenants in good standing upon the termination of the lease with S.M.Y.C. Marina.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved a negotiated deal in Closed Session to terminate the existing Parcel 47 lease and negotiate a Term Sheet with the Parcel 47 yacht club sublessee, the Santa Monica Windjammers Yacht Club (Yacht Club). The agreement allows the Yacht Club to continue to occupy its current facility for a 5 year lease term. If the County determines that it is able to accommodate the Yacht Club in a new facility in the proposed expansion of Chace Park but the new facility is not completed at the end of the 5 year lease term, the lease term may be extended for up to 3 additional periods of one year each. In anticipation of the County's termination of the existing Parcel 47 ground lease, the ground lessee has given the Department of Beaches and Harbors (Department) written notice of the Parcel 47 ground lessee's decision to terminate the existing ground lease effective March 24, 2008, as allowed under the terms of said lease. The proposed lease with the Yacht Club is intended to commence effective upon the termination of the existing ground lease. The Board of Directors of the Yacht Club

recommended that the Yacht Club members ratify the terms of the new Parcel 47 Lease. The members then held a special meeting on February 16, 2008 and approved the new Lease.

The new Yacht Club Lease provides for a monthly rent of \$8,000 (subject to annual CPI increase up to 3% per year), net of property taxes, insurance, utilities, and common area costs ("NNN"), plus percentage rent of (a) 7.35% of the first \$390,000 of gross receipts generated in connection with the use or operation of the yacht club facility, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar sales, telephone/vending receipts or other gross receipts received by the Yacht Club or a successor yacht club in the yacht club facility, plus (b) 17.5% of the above gross receipts over \$390,000; plus (c), 25% of gross receipts for dry storage and storage lockers; use by the Yacht Club of the existing yacht club building, along with the adjacent sidewalks and landscaping, the dry storage facilities, the exterior patio areas located in the back of the yacht club building and the patio/deck on the top of the boater restrooms, the fenced in mule storage area, and other areas on which the hoist and waterside areas are located, including the dock/slip adjacent to the hoist (G1626 and 1628); a security deposit of \$13,000; the reversion to the County of the boater bathrooms, the Promenade, and the adjacent parking lot except that Yacht Club has the right to use 27 parking spaces in the parking lot for dry dock storage and designate 7 parking spaces in the parking lot exclusively for the Yacht Club use; reversion to the County of the existing anchorage on the Parcel 47 Marina with qualified Yacht Club members having the first right to lease vacant slips; Yacht Club's obligation to maintain and repair the areas controlled by the Yacht Club while the County has the obligation for structural repairs to the yacht club building (including building exterior and HVAC and elevator systems) and all other areas reverting to the County; the Yacht Club's payment of a pro rata share of maintenance costs for the exterior areas maintained by the County; liquidated damages of \$100 per day (adjusted for inflation) for each cited lessee maintenance deficiency that remains uncured after the specified cure period; payment of late fees and interest on overdue County payments and certain record-keeping standards. The Department is requesting authority from your Board to execute the new Lease in substantially the form attached hereto as Exhibit A.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility", respectively, the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed terms of the 5-year lease with SMWYC:

BOARD POLICY ITEM	TERMS
PREMISES	<ul style="list-style-type: none">• The demised premises ("Premises") will include the SMWYC Clubhouse building and its most adjacent sidewalks and landscaping, the exterior patio areas located at the back of the building and the patio/deck on top of the boater restrooms, the dry storage facilities, the fenced in mule storage area, and certain areas on which the hoist and waterside staging area are located, including the dock/slip located adjacent to the hoist (G1626 and G1628).• SMWYC will be provided with access rights over those areas not included in the Premises to the extent necessary for access to and between portions of the Premises, and County will reserve easements over exterior portions of the Premises as necessary for use of and access to and between parking, anchorage, boater restrooms and other associated exterior areas.
PARKING	<ul style="list-style-type: none">• SMWYC shall have the right to use 27 parking spaces for dry boat storage purposes. The 27 dry storage spaces are: 1) all the parking spaces along the eastern boundary of Parcel 47; 2) the 10 most eastern spaces (90 feet) on the water side of the planter median; and 3) the most eastern spaces (90 feet) along the southern boundary of Parcel 47.• SMWYC shall have the right to designate up to 7 parking spaces for exclusive yacht club use.
BOAT SLIPS	<ul style="list-style-type: none">• SMWYC shall have the first right of refusal for vacant boat slips for a period of ten days.
TERM	<ul style="list-style-type: none">• 5 years from expiration of existing lease subject to early termination for: a) relocation to a new facility; or b) failure of the Yacht Club to maintain \$175,000 annual dues.

BOARD POLICY ITEM	TERMS
RENT	<p>Minimum Rent</p> <ul style="list-style-type: none"> • \$8,000 per month, net of property taxes, insurance, utilities, and common area costs. • Annual CPI increase up to 3% per year. <p>Percentage Rent</p> <ul style="list-style-type: none"> • 7.35% of first \$390,000 of gross receipts derives from the operation of the Yacht Club • 17.5% of all gross receipts derived from the operation of the Yacht Club over \$390,000 • 25% of all gross receipts derived from dry storage and storage lockers
ARBITRATION	<ul style="list-style-type: none"> • Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.
ASSIGNMENT OR SUBLEASE	<ul style="list-style-type: none"> • SMWYC shall not assign the Lease or sublease the Premises without the County's prior written consent, which consent may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, County agrees not to unreasonably withhold its consent to a merger of SMWYC with one or more other Marina del Rey yacht clubs, and the assignment of the Lease to a successor entity resulting from such a merger.
LEASE ADMINISTRATIVE ITEMS	<ul style="list-style-type: none"> • A 6% late charge after the 5th day plus interest at Prime + 3% for any late payments from due date until paid. Lessee entitled to waiver of late charge once each year so long as paid within one business day of notice by County. Interest applies to all overdue amounts regardless of notice provisions. • Security deposit of \$13,000. • County reserves the right to adjust insurance levels if the Term of the Lease extends beyond 5 years. • SMWYC to provide monthly reports and an annual CPA certification of gross receipts.
PROMENADE	<ul style="list-style-type: none"> • County to maintain promenade, with reimbursement by Lessee of 20% of such maintenance costs in accordance with section RENT above.

BOARD POLICY ITEM	TERMS
MAINTENANCE	<ul style="list-style-type: none">• SMWYC to maintain and repair Premises except for structural elements such as building exteriors and HVAC system and elevators).
INSURANCE	<ul style="list-style-type: none">• SMWYC will be required to carry and maintain insurance on the Premises and its use of the parking, common areas and hoist in accordance with County risk management policy.
HOIST	<ul style="list-style-type: none">• During the Term of the Lease SMWYC will own the hoist and be responsible for its operation, maintenance and repair. Ownership of the hoist shall transfer to County at the termination of the Lease.

FISCAL IMPACT/FINANCING

The termination of the existing lease and approval of the new Lease for Parcels reflects the County's attempt to accommodate a preferred use. The new Lease will produce a fiscal benefit to the County due to: a) the negotiated rent (minimum and percentage) that the Yacht Club will be paying; and b) collection of rents directly from the existing slip tenants (rather than collection of percentage rent from lessee) due to the reversion of the existing docks to the County. The rental increase is discussed in detail below.

Revenue Increase Due to Lease Termination and approval of the new Lease

The total revenue derived from Parcel 47 during fiscal year 2006-2007 was approximately \$259,000. After termination of the existing lease and commencement of the new Lease, the County anticipates a net revenue increase in the range of \$320,000 to \$550,000 annually from the negotiated rent to be paid by the Yacht Club and collection of anchorage rents directly from the slip tenants for the continued use of the land and water area.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing lease for Parcel 47 expires on March 24, 2008 due to existing lessee giving the County notice of lessee's decision to terminate the lease, as allowed under the existing lease. The members of the Yacht Club have ratified the terms of the new Parcel 47 Lease between the County and the Yacht Club. Upon termination of the existing

lease, the County will enter into a new lease with the Yacht Club for an additional 5 year period.

Parcel 47 consists of an existing yacht club facility and an anchorage with 173 slips and six end-ties (with the possibility of mooring up to 11 boats on the end-ties) and is located on Mindinao Way adjacent to Burton Chace Park. The yacht club will rent the Premises from the County but will allow control of the parking lot (except for 27 parking spaces for dry boat storage and 7 parking spaces designated for the use of the Yacht Club) and the anchorage to revert to the County which will manage the parking lot and anchorage and collect rent directly from the Yacht Club and slip tenants

The County anticipates incorporating Parcel 47 into its final design for the expansion of Burton Chace Park wherein it plans to include a facility for the Yacht Club as part of the overall development, either on Parcel 47 or in another part of the expanded Burton Chace Park.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code Sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendations to approve the new Lease for Parcel 47 in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the agreements does not authorize construction or reconstruction of any improvements on the parcel.

CONTRACTING PROCESS

The Yacht Club's proposal for a new Lease was received in response to County's decision not to renew the existing lease on Parcel 47. The new Lease for Parcel 47 will be available to the Yacht Club upon the termination of the existing lease. .

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects, as the County will manage, maintain and control all aspects of the Parcel 47 property operations.

The Honorable Board of Supervisors
March 4, 2008
Page 7

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed lease agreement to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:shk

Attachment (1)

c: County Counsel

LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

SANTA MONICA YACHT CLUB

(Lease No. _____)

Dated as of _____, 2008

TABLE OF CONTENTS

1.	BACKGROUND AND GENERAL.....	1
1.1	Definitions	1
1.2	Lease.....	5
1.2.1	As-Is.....	5
1.2.2	Title.....	6
1.2.3	Additional Access Rights	6
1.2.4	Parking Lot	6
1.2.5	Anchorage.....	7
2.	LEASE TERM.....	9
2.1	Term.....	9
2.2	Early Termination or Extension of Term in Connection with Replacement Facility	9
2.3	Early Termination for Failure to Meet Dues Threshold	9
2.4	Relocation of Premises During Term	9
3.	USE OF PREMISES.....	10
3.1	Permitted Use.....	10
3.2	Prohibited Uses.....	10
3.3	Signs and Awnings	11
3.4	Compliance with Regulations.....	11
3.5	Rules and Regulations	11
3.6	Reservations.....	11
4.	RENTS AND OTHER PAYMENTS	12
4.1	Base Rent	12
4.2	Percentage Rent	12
4.3	Gross Receipts	12
4.4	Net Lease	14
4.5	Rent Payments	16
4.6	Late Fees	16
5.	IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.....	17

5.1	Ownership of Improvements	17
5.2	No Alterations Without Approval of Landlord	17
5.3	Protection of Landlord	17
5.4	Surrender of Possession of Premises at Termination of Lease.....	17
6.	CONDEMNATION.....	18
7.	SECURITY DEPOSIT	18
8.	INDEMNITY.....	19
9.	INSURANCE	19
10.	MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION	24
10.1	Allocation of Maintenance and Repair Obligations	24
10.2	Maintenance Deficiencies.....	25
10.3	Repairs Not Performed by Lessee	26
10.4	Damage of Destruction	27
11.	ASSIGNMENT AND SUBLEASE.....	27
12.	NO ENCUMBRANCES.....	27
13.	DEFAULT	28
14.	ACCOUNTING.....	29
15.	MISCELLANEOUS	31
16.	ARBITRATION	35
17.	INTERPRETATION	40
EXHIBIT A	PREMISES OUTLINE.....	A-1
EXHIBIT B	PARKING LOT.....	B-1
EXHIBIT C	ANCHORAGE	C-1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into as of _____, 2008 ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("Landlord"), as landlord, and SANTA MONICA YACHT CLUB, a California corporation, dba Santa Monica Windjammers Yacht Club ("Tenant"), as tenant.

RECITALS

A. Landlord owns fee title to certain land and improvements located in the Marina del Rey Small Craft Harbor and referred to herein as the Premises.

B. Landlord desires to lease to Tenant, and Tenant desire to lease from Landlord, the Premises, on and subject to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "ACCESS AREAS" shall have the meaning set forth in Section 1.2.3.

1.1.2 "ADA" shall have the meaning set forth in Section 1.2.1.

1.1.3 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.4 "ANCHORAGE" shall mean the boat slips depicted on Exhibit C attached to this Lease.

1.1.5 "ANNUAL ESTIMATE STATEMENT" shall have the meaning set forth in Section 4.4.

1.1.6 "ANNUAL RECONCILIATION STATEMENT" shall have the meaning set forth in Section 4.4.

1.1.7 "APPLICABLE LAWS" shall have the meaning set forth in Section 1.2.1.

1.1.8 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the (a) the Prime Rate plus three percent (3%) per annum; or (b) the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.1.9 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.10 **"BOARD"** shall mean the Board of Supervisors for the County of Los Angeles.

1.1.11 **"BOATER RESTROOMS"** shall mean the restroom, showers and laundry building owned by County and located adjacent to the Premises, and which is used as restrooms, showers and laundry facilities that serve the Anchorage.

1.1.12 **"BUILDING"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.13 **"BUSINESS DAY"** shall have the meaning set forth in Section 17.3.

1.1.14 **"CITY"** shall mean the City of Los Angeles, California.

1.1.15 **"CPI"** shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by Landlord and Tenant.

1.1.16 **"COUNTY"** shall mean Los Angeles County, California.

1.1.17 **"DEPARTMENT"** shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.18 **"DIRECTOR"** shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.19 **"DRY STORAGE FACILITIES"** shall mean the portion of the Premises located in the Parking Lot that are used for the dry storage of boats, as depicted in Exhibits A and B attached to this Lease.

1.1.20 **"DRY STORAGE GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.21 **"EFFECTIVE DATE"** shall mean the date set forth in the first paragraph of this Lease.

1.1.22 **"EVENTS OF DEFAULT"** shall have the meaning set forth in Section 13.1.

1.1.23 **"GROSS RECEIPTS"** shall have the meaning set forth in Section 4.3.

1.1.24 **"GROSS RECEIPTS REPORT"** shall have the meaning set forth in Section 4.3.2.

1.1.25 **"HOIST"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.26 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, walls, paving, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.27 **"LANDLORD"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.28 **"LATE FEE"** shall have the meaning set forth in Section 4.6.

1.1.29 **"LEASE"** shall mean this Lease Agreement.

1.1.30 **"LEASE YEAR"** shall have the meaning set forth in Section 2.1.

1.1.31 **"MINIMUM STANDARDS"** shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects in Marina del Rey.

1.1.32 **"MONTHLY BASE RENT"** shall have the meaning set forth in Section 4.1.

1.1.33 **"PARKING LOT"** shall have the meaning set forth in Section 1.2.4.

1.1.34 **"PERCENTAGE RENT"** shall have the meaning set forth in Section 4.2.

1.1.35 **"PERMITTED USE"** shall have the meaning set forth in Section 3.1.

1.1.36 **"PREMISES"** shall mean the land and water depicted on Exhibit A attached to this Lease and all Improvements located thereon, except any portions thereof expressly excluded from the Premises pursuant to this paragraph. For purposes of clarification, the Premises shall include the following land, water and improvements within the outline of the Premises shown on Exhibit A (the **"Premises Outline"**): (a) Tenant's existing clubhouse building (the **"Building"**) and all fixtures and utility systems and equipment located therein; (b) the sidewalks and landscaped areas included within Premises Outline; (c) the exterior patio areas located at the back of the Building and the patio/deck located on top of the Boater Restrooms (but excluding the Boater Restrooms); (d) the Dry Storage Facilities; (e) the fenced in mule storage area; (e) the boat hoist shown on Exhibit A (the **"Hoist"**) and, to the extent within the Premises Outline, the areas on which the Hoist and waterside staging area are located; and (f) the docks commonly known as G1626 and G1628. The Premises exclude the adjacent parking facilities, the Boater Restrooms, the Promenade and the Anchorage. In addition to the

Premises, Tenant has certain rights of access to other adjacent facilities in accordance with the provisions of Sections 1.2.3 and 1.2.4 of this Lease.

1.1.37 **"PREMISES OUTLINE"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.38 **"PRIMARY GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.39 **"PRIME RATE"** shall mean the prime or reference rate of interest announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. or its successor ceases to exist, then the prime or reference rate of interest announced from time to time by the largest California chartered bank in terms of deposits.

1.1.40 **"PROMENADE"** shall mean the waterfront boardwalk and promenade located adjacent or substantially adjacent to the Premises and between the Premises and the adjacent water area, including without limitation, all landscaping and improvements thereon.

1.1.41 **"PUBLIC WORKS DIRECTOR"** shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.42 **"RELOCATION FACILITY"** shall have the meaning set forth in Section 2.4.

1.1.43 **"REPLACEMENT FACILITY"** shall have the meaning set forth in Section 2.2.

1.1.44 **"SECTION"** shall mean a section of this Lease.

1.1.45 **"SECURITY DEPOSIT"** shall have the meaning set forth in Section 7.1.

1.1.46 **"STATE"** shall mean the State of California.

1.1.47 **"TENANT"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.48 **"TENANT PARTY"** shall mean any agent, officer, employee, licensee, concessionaire, permittee, subtenant, contractor, vendor, member, invitee or guest of Tenant.

1.1.49 **"TENANT'S OPERATING EXPENSES"** shall have the meaning set forth in Section 4.4.4.

1.1.50 **"TERM"** shall have the meaning set forth in Section 2.1.

1.1.51 **"TERM COMMENCEMENT DATE"** shall have the meaning set forth in Section 2.1.

1.1.52 **"TERM EXPIRATION DATE"** shall have the meaning set forth in Section 2.1.

1.1.53 **"TIME OF THE ESSENCE"** shall have the meaning set forth in Section 15.2.

1.2 **Lease.** For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases and hires from Landlord, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined), upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 **As-Is.** Tenant acknowledges that it is currently in possession of and has previously occupied the Premises pursuant to a pre-existing lease and thus is fully aware and apprised of the condition of the Premises. Tenant accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Tenant hereby represents that it has performed all investigations necessary in connection with its acceptance of the Premises **"AS IS WITH ALL FAULTS"**. Tenant hereby accepts the Premises on an **"AS IS WITH ALL FAULTS"** basis and, except as expressly set forth in this Lease, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and the Improvements included therewith, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, including all Improvements, (iv) the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or Improvements for any particular purpose, (v) the zoning or other legal status of the Premises or any public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or Improvements with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the City, County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity (**"Applicable Laws"**) or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act, as amended from time to time (**"ADA"**)), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in

any Improvements, (ix) subject to Section 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or the Improvements included therewith.

1.2.2 **Title.** Landlord represents that Landlord owns fee title to the Premises and that Landlord has authority to enter into this Lease. Tenant hereby acknowledges the title of Landlord in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Tenant may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 **Additional Access Rights.** In addition to possession of the Premises, Tenant shall have non-exclusive rights of access to the following improvements and/or areas located adjacent to the Premises (collectively, the "Access Areas"): (a) the electrical panel located in the Boater Restrooms as necessary for access to the circuit breaker for the Hoist; (b) the Boater Restrooms for use by subtenants of the Dry Storage Facilities; (c) those portions of the Parking Lot that are not included in the Premises, subject to and in accordance with terms and provisions of Section 1.2.4 below; and (d) any sidewalks, walkways and driveways located adjacent to the Premises for pedestrian access to the extent such access is both consistent with the current use of the Premises and necessary for ingress and egress to, from, among and between the Premises and the Access Areas described in clauses (a) through (c) above. Tenant's rights of access to and use of the Access Areas shall be subject to and in accordance with the following provisions: (i) Tenant's access to and use of the Access Areas shall be subject to compliance with the reasonable rules and regulations for such access and use promulgated from time to time by Landlord, including without limitation, the hours of such access and use; (ii) Tenant shall not exercise its rights under this Section 1.2.3 in any manner that interferes with, obstructs or impairs the access to, use and enjoyment of the Access Areas by Landlord or any other persons or entities to which Landlord grants rights of access or use; (iii) Tenant shall maintain liability insurance with respect to the exercise of its rights under this Section 1.2.3 in accordance with the terms of this Lease as if the Access Areas were a part of the Premises; (iv) Tenant shall have no right to make any Improvements or Alterations to the Access Areas or to place any furniture, fixtures or equipment in the Access Areas; (v) Tenant shall be solely responsible for all costs and expenses incurred by County in connection with any damage to the Access Areas or any Improvements or equipment located therein or adjacent to the Access Areas, to the extent caused by or incurred in connection with any access to or use of the Access Areas by Tenant or any Tenant Party; and (v) Tenant agrees to indemnify, defend and hold Landlord harmless from and against all liabilities, losses, damages, claims, costs and/or expenses (including reasonable attorneys' fees) incurred by Landlord as a result of or in connection with access to or use of the Access Areas by Tenant or any Tenant Party.

1.2.4 **Parking Lot.** Exhibit B attached to this Lease is a depiction of the surface parking lot located adjacent to the Building (the "Parking Lot"). The Parking Lot currently contains one hundred seventy-nine (179) parking spaces. Twenty-seven (27) of such spaces are used for the Dry Storage Facilities and are included in the

Premises. Use of an additional one hundred forty-five (145) of the parking spaces in the Parking Lot are reserved to Landlord to serve Anchorage users or for such other purposes as determined by Landlord. In addition to the Dry Storage Facilities, Landlord hereby grants Tenant a right of access to and use of the seven (7) parking spaces specifically marked for Tenant's use on Exhibit B.

The current striping plan for the Parking Lot is different than the striping plan that was originally in effect for the Parking Lot, and results in a reduction from the number of parking spaces originally contained in the Parking Lot. If the Department determines that the number of parking spaces in the Parking Lot is inadequate for the Anchorage or Premises, or if another governmental agency requires the number of parking spaces to be increased (up to and including the number of parking spaces that were originally contained in the Parking Lot), then Landlord shall re-stripe the Parking Lot in a manner acceptable to Department and/or any such governmental agency (as applicable) and Tenant shall pay to Landlord within thirty (30) days after written demand, twenty percent (20%) of the cost of such re-striping; provided, however, that no re-striping required by the Department shall restrict Tenant's ability to provide functionally equivalent dry boat storage facilities immediately adjacent to the Hoist. If Tenant desires to re-stripe the Parking Lot, then such re-striping shall be at Tenant's cost and shall be conditioned upon Landlord's prior written approval and subject to any subsequent re-striping pursuant to the preceding provisions of this paragraph. If as a result of any re-striping there is an adjustment to the location and/or number of spaces used for dry boat storage purposes, Anchorage tenants and/or the Building, then the parties shall enter into an amendment to this Lease to reflect such adjustment.

The Parking Lot shall be operated and maintained by Landlord, including the management of non-permit temporary or overnight parking and abandoned vehicles. Access to the Parking Lot shall continue to be generally controlled via a key card access system, as necessary in Landlord's judgment to limit use of the Parking Lot to Tenant's yacht club members, Anchorage tenants and as otherwise permitted hereunder. Tenant shall have the right to raise the gate arms for deliveries to the Building. Use of the parking spaces that are not included in the Premises for dry boat storage purposes shall be on a non-reserved first-come, first-served basis (subject to the limitation on the total number of spaces allocated to each party under this Section 1.2.4), except that (a) Tenant shall have the right to designate and mark (in a manner acceptable to Landlord) for exclusive yacht club use Tenant's seven (7) parking spaces described in the first paragraph of this Section 1.2.4; and (b) Landlord reserves the right to designate specific spaces for Anchorage tenants if necessary in the Landlord's judgment. Tenant shall in all cases have the right to use the Parking Lot for yacht club event purposes for up to six (6) yacht club events per year. Tenant shall use its best efforts to provide Landlord with sixty (60) days prior written notice of the date of such yacht club events to permit Landlord to notify Anchorage tenants. In no case shall Tenant provide Landlord less than forty-five (45) days' prior written notice of the date of any such yacht club event. Landlord shall have the right to use the Parking Lot for other parking purposes during non-peak times on weekdays, including evening meetings (e.g., by raising the gate arms

at Landlord's option), as long as such use does not interfere with Tenant's use of its parking rights under this Section 1.2.4.

1.2.5 Anchorage. The Anchorage shall be owned and operated (at Landlord's discretion) by Landlord (or its successor or designee) and Tenant shall have no rights with respect to the Anchorage, except as set forth in this Section 1.2.5. Landlord shall have the right to establish and modify from time to time the rents and any other charges (including without limitation, surcharges or additional fees for liveaboards) for use and occupancy of boat slips in the Anchorage. The remaining terms and provisions of this Section 1.2.5 shall be applicable only during such periods as the Anchorage continues to be operated and rented to individual boat slip users. Tenant shall have a first right to have its yacht club members rent vacant slips in accordance with the terms of this Section 1.2.5. Landlord shall have the right to limit the number of liveboard boat slip tenants in the Anchorage to that number that were in legal occupancy and in good standing as of March 8, 2007.

Landlord agrees to notify Tenant in writing of all boat slip vacancies (a "Vacancy Notice") prior to the lease of a vacant slip to another user. Landlord shall have the right to deliver the Vacancy Notice during the termination notice period for the previous tenant. Tenant must exercise its first right under this Section 1.2.5, if at all, by delivery to Landlord within ten (10) days after the Vacancy Notice of a written referral of a qualified member (or members) of Tenant's yacht club for the rental of the vacant slip (or slips) referenced in the Vacancy Notice and a completed application (along with all associated forms) and rental agreement signed by such member. The application/forms and rental agreement shall be in such form as required by Landlord from time to time. Landlord and Tenant shall cooperate to agree on a procedure (a) for the preparation of a waiting list of Tenant's members (organized by slip size) who desire to rent slips, (b) the pre-qualification of such members, and (c) the delivery to County of completed applications/forms and signed rental agreements for consideration by County. All applications and prospective slip renters must satisfy the Landlord's standard conditions and qualifications for renting a slip. If County does not receive the above-required application/forms and executed rental agreement for a vacant slip from a qualified member within the foregoing ten (10) day period, then Landlord shall be free to rent such slip to any person or entity and on such terms that Landlord desires. The terms and provisions of this Section 1.2.5 shall inure only to the benefit of Tenant, and no members of Tenant shall have any rights under this Section 1.2.5 (including without limitation, as third party beneficiaries) nor shall Landlord have any obligation or liability to such members.

Tenant shall have the right to directly lease from Landlord (as opposed to having its individual members lease from Landlord) up to two (2) boat slips in the Anchorage pursuant to the right of offer set forth in this Section 1.2.5. Tenant shall have the right to sublease such two (2) boat slips to its individual yacht club members, provided that any such sublease shall be subject to Landlord's approval of the subtenant and the sublease, and Tenant shall not charge rent or other amounts in connection with such sublease that

exceed the rent and charges payable by Tenant to Landlord in connection with Tenant's direct lease of the boat slip from Landlord.

Any member of Tenant's club that rents a boat slip in the Anchorage shall have the right to permit the use of such slip on a temporary basis by a visitor to Tenant's club that is a member of another yacht club that shares reciprocal yacht club privileges with Tenant's club, without additional charge to Tenant or the visitor.

2. **LEASE TERM.**

2.1 **Term.** The term of the Lease ("**Term**") shall commence on _____ [INSERT THE DAY FOLLOWING THE EFFECTIVE TERMINATION DATE OF THE EXISTING LEASE] (the "**Term Commencement Date**") and, unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the day preceding the fifth (5th) anniversary of the Term Commencement Date (the "**Term Expiration Date**"). For purposes of this Lease, "**Lease Year**" shall mean each year during the Term of this Lease commencing on the Term Commencement Date and each successive anniversary thereof.

2.2 **Early Termination or Extension of Term in Connection with Replacement Facility.** Landlord intends to pursue consideration of the development of a replacement facility for the future occupancy of Tenant (and potentially other users) (a "**Replacement Facility**"). Landlord shall take into consideration input from Tenant as to the scope, size and programmatic requirements for such Replacement Facility. The development and lease to Tenant of a Replacement Facility shall be subject to compliance with any request for proposal ("**RFP**") process implemented by Landlord for such Replacement Facility. Subject to such RFP process, Landlord and Tenant shall negotiate in good faith to attempt to agree upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, then this Lease shall terminate effective as of the commencement of the term of the new lease to Tenant for the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, but the Replacement Facility is not completed for Tenant's occupancy of the Replacement Facility by the Term Expiration Date, then upon the mutual agreement of Landlord and Tenant the Term of this Lease shall be subject to extension for up to three (3) periods of one (1) year each.

2.3 **Early Termination for Failure to Meet Dues Threshold.** If during any Lease Year the aggregate amount of dues paid to Tenant by its members is less than One Hundred Seventy Five Thousand Dollars (\$175,000.00), then Tenant shall have the right to terminate the Lease upon not less than six (6) months prior written notice to Landlord.

2.4 **Relocation of Premises During Term.** If during the Term Landlord requires use of the Premises for another purpose (including without limitation, park or development purposes) County shall have the right during the Term to relocate the Premises to another facility of comparable size and facility improvements, and with comparable access to parking, boat slips and dry storage (a "**Relocation Facility**"). If County elects to relocate the Premises pursuant to

this Section 2.4, the Premises shall be relocated to the Relocation Facility on not less than sixty (60) days prior written notice to Tenant and the parties shall execute an amendment to this Lease to document the change in location of the Premises to the Relocation Facility. Landlord shall be responsible for the cost to relocate and install in the Relocation Facility Tenant's furniture, fixtures, equipment and other property.

3. **USE OF PREMISES.**

3.1 **Permitted Use.** The Premises shall be used by Tenant only for the operation of the Santa Monica Windjammers Yacht Club (or its successor pursuant to Article 14 below) and for no other purpose (the "Permitted Use"). Tenant shall also have the right on an ancillary basis to permit other organizations (e.g., the Coast Guard Auxiliary) to hold meetings at the Premises in a manner and frequency consistent with Tenant's past practices.

3.2 **Prohibited Uses.** Notwithstanding the foregoing:

3.2.1 **Nuisance.** Tenant shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property.

3.2.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Permitted Use of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 the Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 the Premises shall not be used in any way in a manner inconsistent with the Permitted Use; without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3 no condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Tenant shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.4 without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Tenant outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise; Landlord hereby approves Tenant's continued use of the existing antennae installed on the Premises as of the date of this Lease in the manner in which such antennae have been used prior to the date of this Lease, as long as such use does not violate any other provision of this Lease;

3.2.2.5 no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of the Permitted Use, and (b) conducted in compliance with all Applicable Laws.

3.3 **Signs and Awnings.** Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved in writing by Director (and to the extent required under then Applicable Law, the Design Control Board).

3.4 **Compliance with Regulations.** Tenant shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Tenant shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Tenant pursuant to Section 10.1 below. Landlord shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Landlord pursuant to Section 10.1 below; provided, however, that to the extent that the requirement to make an Alteration to comply with Applicable Laws is triggered by (a) any Alterations made to the Premises by Tenant, or (b) any change in the use of the Premises by Tenant, then Tenant shall be responsible for the costs and expenses incurred by Landlord for such Alteration.

3.5 **Rules and Regulations.** Tenant agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by Landlord from time to time and delivered in writing to Tenant. Any dispute as to whether Landlord has acted unreasonably in connection with the matters described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 **Reservations.** County hereby reserves an easement and right of access to and use of the exterior portions of the Premises as necessary or appropriate in the reasonable judgment of County for ingress and egress to, from, among and between the land and improvements located adjacent to the Premises, including without limitation, the Parking Facilities, Boater Restrooms,

Promenade and Anchorage. Tenant also expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, (b) otherwise referenced in this Lease in, to, over or affecting the Premises, or (c) consented to by Tenant.

Without limiting the foregoing, Tenant expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of the City or County to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of the City or County to convey such easements and transfer such rights to others.

4. **RENT AND OTHER PAYMENTS.**

4.1 **Base Rent.** Tenant shall pay Landlord base rent ("Monthly Base Rent") during the Term. The Monthly Base Rent for the first Lease Year shall be Eight Thousand Dollars (\$8,000.00) per month. The Monthly Base Rent shall be subject to adjustment effective as of the first day of the second and each successive Lease Year during the Term to an amount equal to the product of (a) the Monthly Base Rent in effect for the first Lease Year, multiplied by (b) a fraction the numerator of which is the CPI for the month that is three (3) months prior to the month during which the Monthly Base Rent adjustment is to take effect, and the denominator of which is the CPI for the month that is three (3) months prior to the month during which the Term Commencement Date occurs. Notwithstanding the foregoing, (i) in no event shall the Monthly Base Rent for any Lease Year be less than the Monthly Base Rent in effect for the immediately preceding Lease Year; and (ii) in no event shall the Monthly Base Rent for any Lease Year exceed the Monthly Base Rent in effect for the first Lease Year increased at a cumulative and compounded annual rate of three percent (3%) per year during the Term.

4.2 **Percentage Rent.** In addition to Monthly Base Rent, Tenant shall pay to Landlord percentage rent ("Percentage Rent") equal to the sum of (a) seven and 35/100 percent (7.35%) of the first Three Hundred Ninety Thousand Dollars (\$390,000.00) of Primary Gross Receipts (as defined below) for each Lease Year, plus (b) seventeen and 50/100 percent (17.5%) of all Primary Gross Receipts for each Lease Year in excess of Three Hundred Ninety Thousand Dollars (\$390,000.00), plus (c) twenty-five percent (25%) of Dry Storage Gross Receipts (as defined below). For purposes of this Lease, (a) "Primary Gross Receipts" shall mean all Gross Receipts generated in connection with the use or operation of the Premises, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar receipts, telephone/vending receipts, mail box charges, locker rentals and production/filming receipts, but excluding Dry Storage Gross Receipts; and (b) "Dry Storage Gross Receipts" shall mean all Gross Receipts generated in connection with the use or operation of the Dry Storage Facilities or storage lockers.

4.3 **Gross Receipts.** For purposes of this Lease, "Gross Receipts" means the gross amount of all money, receipts, dues, commissions, charges, fees, payments, reimbursements,

compensation, accounts or notes receivable or other things of value, received by or payable to Tenant (and/or any assignee, subtenant, licensee, permittee or concessionaire, although this section shall not be interpreted to permit any use, occupancy or operation of the Premises by any person or entity other than Tenant) from or in connection with the use, occupation or operation of any activity or business on the Premises or in any Access Areas, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

4.3.1 **Calculation of Gross Receipts.** In the calculation of Gross Receipts, the following shall be applicable:

(1) There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent, utilities, credit card fees, insurance premiums and taxes.

(2) Gross Receipts shall not include and retail sales tax imposed upon the consumer, collected by Tenant and remitted by Tenant to the applicable governmental agency.

(3) Gross Receipts must include the usual charges for any services, goods, rentals or facilities. Bona fide bad debts actually accrued by Tenant for delinquent payables owed to Tenant may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously excluded from Gross Receipts shall be included in Gross Receipts in the Lease Year in which they are collected.

(4) Gross Receipts shall not include any of the following items:

a. refunds to members or customers on merchandise sold to such members or customers and returned to Tenant;

b. sales of fixtures, equipment or property which are not Tenant's stock in trade;

c. receipts from insurance claims other than proceeds related to the replacement of Gross Receipts; and

d. interest earned by Tenant on funds arising from the Premises or the use thereof, deposited or maintained by Tenant in banks or similar financial institutions.

(5) Interest, service or late charges collected in conjunction with a transaction, sale or activity shall be included in Gross Receipts in the same percentage category as the underlying transaction, sale or activity is required to be reported.

(6) Although Tenant has no right to sublease the Premises or any portion thereof, or to permit any licensee, concessionaire or other person or entity to occupy, use or conduct any business or activity on the Premises or Access Areas, if any person or entity other than Tenant occupies, uses or conducts any business or activity on or from the Premises or Access Areas, the Gross Receipts of such subtenant, licensee, concessionaire or other person or entity from such business or activity shall be included in Gross Receipts.

(7) Gross Receipts shall not include receipts from charity events held on the Premises provided that (a) such events are conducted only on an ancillary basis and are consistent in scope and frequency with Tenant's past practices; (b) the recipient of the receipts from the event is a bona fide charitable organization (based on federal income tax status) that is not affiliated with Tenant or any subtenant and whose operation and mission are not related to boating, sailing or other marina activities; and (c) all receipts from the event (after offset of bona fide out-of-pocket expenses, without compensation to Tenant) are donated to a qualified recipient under clause (b) above. Tenant shall provide Landlord with such information and materials as requested by Landlord to permit Landlord to verify the application of this subsection (7).

(8) Director, by Policy Statement and with the approval of Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the calculation of Percentage Rent.

4.3.2 Reporting of Gross Receipts and Payment of Percentage Rent.

Within fifteen (15) days after the end of each calendar month (or partial calendar month) during the Term, (a) Tenant shall deliver to Landlord a written report ("Gross Receipts Report") that sets forth the Primary Gross Receipts and Dry Storage Gross Receipts for such immediately preceding month and the aggregate Primary Gross Receipts and Dry Storage Gross Receipts to date for the then current Lease Year, in such form and detail as reasonably acceptable to Landlord, and (b) pay to Landlord Percentage Rent payable for the Primary Gross Receipts and Dry Storage Gross Receipts for the immediately preceding month. The monthly payments of Percentage Rent for Primary Gross Receipts shall be equal to seven and 35/100 percent of Primary Gross Receipts until the aggregate Primary Gross Receipts for such Lease Year exceed Three Hundred Ninety Thousand Dollars (\$390,000.00), following which Percentage Rent for Primary Gross Receipt shall be payable at the rate of seventeen and 50/100 percent (17.5%) of such Primary Gross Receipts for the remainder of such Lease Year. Tenant shall comply with all recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Landlord, set forth in Article 14 of this Lease.

4.4 Net Lease. All references to "rent" under this Lease shall mean the Monthly Base Rent, Percentage Rent or other amounts payable by Tenant to Landlord under this Lease. The parties acknowledge that the rent to be paid by Tenant under this Lease is intended to be

absolutely net to Landlord. The rent and other sums to be paid to Landlord hereunder are not subject to any credit, demand, set-off or other withholding.

4.4.1 **Utilities.** In addition to rent, Tenant shall pay, or cause to be paid, to County or the utility provider (as applicable), all utility and service charges for water, electricity or other power, gas, sewage disposal, telephone service, cable service, garbage and trash collection and other utilities and services to the Premises. If any utilities are not separately metered or submetered, Tenant shall pay to County the cost of the utilities reasonably allocated to the Premises.

4.4.2 **Insurance.** Tenant shall pay to County the cost of all insurance maintained by County with respect to the Premises. The cost of any insurance that pertains to the Premises and other property owned by County shall be apportioned between the Premises and such other property on a reasonable basis.

4.4.3 **Taxes and Assessments.** Tenant shall prior to delinquency all taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or other levying body upon any interest in this Lease or any possessory right which Tenant may have in or to the Premises allocable to the Term of this Lease, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Tenant shall have the right to contest the amount of any assessment imposed against the Premises or its possessory interest therein; provided, however, all costs and expenses of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Tenant. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. The possessory interest taxes and any other taxes applicable to the Premises or Tenant's interest in this Lease shall be pro-rated for any partial tax years included in the Term.

4.4.4 **Expenses Relating to Access Areas and Promenade.** Tenant shall pay to County twenty percent (20%) of all direct variable expenses incurred by Landlord for insurance, utilities, trash removal, maintenance, repair, landscaping and other common area services or costs attributable to the Access Areas, the Promenade, any other exterior common areas and the Common Water Heater (the "**Tenant's Operating Expenses**"). If expenses are incurred with respect to both the areas described in the immediately preceding sentence and other areas owned by County, such expenses shall be apportioned between the areas described in the immediately preceding sentence and such other areas on a reasonable basis. Prior to the commencement of each Lease Year, Landlord shall deliver to Tenant a statement setting forth Landlord's good faith estimate of Tenant's Operating Expenses projected to be incurred for the ensuing Lease Year (the "**Annual Estimate Statement**"). On or before the first day of each month during each Lease Year, Tenant shall pay to Landlord Tenant's Operating Expenses on an estimated basis in an amount equal to one-twelfth (1/12) of the estimated amount set forth in the

Annual Estimate Statement for such Lease Year. No delay or failure of Landlord to deliver the Annual Estimate Statement shall relieve Tenant of its obligations under this Section 4.4.4, except that until Landlord has delivered the Annual Estimate Statement for a Lease Year Tenant shall continue to pay monthly estimated installments of Tenant's Operating Expenses based on the estimate set forth in the Annual Estimate Statement for the preceding Lease Year. Within ninety (90) days after the end of each Lease Year, Landlord shall deliver to Tenant a statement (the "**Annual Reconciliation Statement**") setting for the actual amount of Tenant's Operating Expenses for the preceding Lease Year. In the event that the monthly estimated amounts of Tenant's Operating Expenses paid by Tenant for such Lease Year are less than the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall pay the difference to Landlord within thirty (30) days after receipt by Tenant of the Annual Reconciliation Statement. In the event that the monthly estimated amounts paid by Tenant for such Lease Year exceed the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall be entitled to credit the difference against the next rent payable to Landlord under this Lease, or, in the case of the final Lease Year, any such overpayment shall be returned to Tenant concurrent with the delivery by Landlord of the Annual Reconciliation Statement. Landlord shall not be in default or liable to Tenant for a delay in the delivery of the Annual Reconciliation Statement, but any overpayments by Tenant on an estimated basis shall bear interest at the Prime Rate during any period of delay in the delivery by Landlord of the Annual Reconciliation Statement.

4.5 **Rent Payments.** Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant in advance on or before the first (1st) day of each calendar month of the Term. If the Term Commencement Date does not occur on the first day of a calendar month, then the first payment of Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant on or before the Term Commencement Date, and the Monthly Base Rent and Tenant's Operating Expenses for the first and last partial months during the Term shall be calculated on a pro rata basis based on the number of days in each such partial month as compared to the total number of days in the applicable calendar month during which such partial month occurs.

Percentage Rent for each month (or partial month) during the Term shall be paid by Tenant in arrears on or before the fifteenth (15th) day of the following month in accordance with Section 4.3.2 above.

All payments under this Lease shall be by check or draft issued and payable to the County of Los Angeles, delivered to the Department of Beaches and Harbors, Los Angeles, California, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Tenant by Landlord from time to time. Tenant acknowledges that Landlord shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Tenant has received no such statement, invoice or demand.

4.5 **Late Fees.** If any payment under this Lease is not received by Landlord by the date due, Tenant acknowledges that Landlord will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine.

Therefore, a fee ("Late Fee") of six percent (6%) of the unpaid amount shall be payable with respect to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Tenant shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Tenant within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from Landlord. In addition to any Late Fee, any unpaid amounts shall additionally bear interest at the Applicable Rate, computed from the date such amount was due and payable, compounded monthly, until paid. Tenant acknowledges that such Late Fee and interest shall be applicable to all monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on any unpaid amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by Landlord).

5. **IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.**

5.1 **Ownership of Improvements.** All Improvements included in the Premises and all Alterations (as defined below) thereto shall be owned by Landlord, and Tenant shall have only a leasehold interest therein pursuant to this Lease; provided, however, during the Term Tenant shall be considered as the owner of the Hoist and shall be fully and solely responsible for the operation, maintenance, repair and/or replacement (as necessary) of the Hoist. Tenant shall have no right to remove the Hoist from the Premises, except if Tenant replaces the Hoist with a new replacement hoist acceptable to County. At the expiration or earlier termination of the Term, ownership of the Hoist shall automatically transfer to County.

5.2 **No Alterations Without Approval of Landlord.** Tenant shall not make any additional improvements, modifications, installations or other alterations (collectively, "Alterations") of, on or to the Premises or any utility or other systems serving the Premises, without the prior written consent of Landlord, which consent may be withheld or conditioned by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, on prior written notice to Landlord, but without requiring Landlord's consent, Tenant shall have the right to make cosmetic alterations to the interior of the Building (such as paint and carpet) as long as such alterations do not reduce the value of the Building, affect the utility systems serving the Building, or cost in excess of an aggregate of Ten Thousand Dollars (\$10,000.00).

5.3 **Protection of Landlord.** Nothing in this Lease shall be construed as constituting the consent of Landlord, express or implied, to the performance of any labor or the furnishing of any materials to the Premises by any contractor, subcontractor, laborer or materialman, in such manner as would give rise to the filing of mechanics' liens or other claims against Landlord or Landlord's interest in the Premises.

5.3.1 **Posting Notices.** Landlord shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord's interest in the Premises from mechanics' liens or other claims.

5.3.2 **Liens; Indemnity.** Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Tenant and/or any parties claiming through Tenant. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any claims, liability, losses, damages, costs, expenses (including without limitation, attorneys' fees) incurred in connection with any claims of liens of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded, Tenant shall, within five (5) business days after demand, satisfy or otherwise cause such lien to be removed of record, whether by bonding or otherwise.

5.4 **Surrender of Possession at Termination of Lease.** At the expiration of the Term or sooner termination of this Lease, (a) Tenant shall surrender possession of the Premises to Landlord in the condition that such Premises was required to be maintained and repaired by Tenant under this Lease, and (b) Tenant shall remove from the Premises all unaffixed furniture, equipment and other personal property owned by Tenant, and repair any damage to the Premises incurred in connection with such removal. If Tenant fail to remove its personal property from the Premises as required under this Section 5.4, then Tenant shall lose all right, title and interest in and to such personal property, and Landlord may elect to keep the same upon the Premises or to sell, remove, or destroy the same, in event of which sale, removal, or destruction Tenant shall reimburse Landlord for its costs incurred in connection with such sale, removal or destruction in excess of the consideration, if any, received by Landlord as a result of the sale of any such personal property.

6. **CONDEMNATION.** In the event that more than ten percent (10%) of the floor area of the Building, or such portion of any other areas of the Premises or Parking Lot that prevents the occupancy or operation of the remaining portion of the Premises, is taken by eminent domain or condemnation, then either Landlord or Tenant shall have the option of terminating this Lease upon giving written notice of such election to the other within thirty (30) days after receipt of written notice of such taking. If the Lease is not terminated, then Monthly Base Rent shall be equitably reduced on a reasonable basis to reflect the relative value to Tenant of the portion of the Premises that is taken. The entire condemnation award shall belong to Landlord, except that Tenant shall be entitled to the portion of any award, if any, allocated by the condemning authority to the taking of or damage to Tenant's personal property or relocation expenses.

7. **SECURITY DEPOSIT.**

7.1 **Amount and Use.** Tenant shall deliver to and maintain with Landlord a security deposit (the "Security Deposit") in an initial amount equal to Thirteen Thousand Dollars (\$13,000.00). Effective as of each date that the Monthly Base Rent is increased under Section 4.1 of this Lease, the amount of the Security Deposit shall be increased by the same percentage

increase as the percentage increase in the Monthly Base Rent. The Security Deposit shall secure Tenant's obligations pursuant to this Lease, and may be drawn on by Landlord, in whole or in part, to cover (a) delinquent rent not paid by Tenant within any applicable notice and cure period, and (b) any other Events of Default of Tenant under this Lease. The Security Deposit shall be applied at the discretion of Landlord. Tenant shall have the right to maintain the Security Deposit either in the form of cash, or in the form of a certificate of deposit, letter of credit or other approved investment instrument issued with Landlord as the sole owner or beneficiary, in each case acceptable to Landlord in form, content and issuer. As long as no Event of Default by Tenant exists under the Lease, Tenant shall be entitled to a credit for any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to Landlord in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Tenant shall not be entitled to interest). Notwithstanding any contrary provision hereof, Landlord shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Tenant under the Lease.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by Landlord and applied against any delinquent rent not paid by Tenant within any applicable notice or cure period, or against other Events of Default of Tenant hereunder, Tenant shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with Landlord, or cause the issuer of any letter of credit to reissue the letter of credit, such that Tenant once again maintains the full amount of the Security Deposit required under this Article 7. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Section 13.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Tenant and delivered to Landlord shall provide for notice to Landlord by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Tenant has not provided Landlord with satisfactory evidence of its renewal or replacement, or has not provided Landlord with adequate replacement security, Landlord may draw down upon the letter of credit and hold the funds as security for Tenant's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Tenant within any applicable notice and cure period and/or any other Event of Default of Tenant under this Lease.

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any indemnitee, Tenant shall at all times relieve, defend, indemnify, protect, and save harmless Landlord and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Tenant and reasonably satisfactory to Landlord, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Landlord or any of

its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Tenant or any Tenant Party, (b) the acts, omissions, or negligence of Tenant or any Tenant Party, or (c) the failure of Tenant or any Tenant Party to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Tenant to so relieve, defend, indemnify, protect, and save harmless Landlord and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Tenant beyond the expiration of the Term or other termination of this Lease.

9. INSURANCE.

9.1 **Tenant's Insurance.** Without limiting Tenant's indemnification of Landlord, during the Term of this Lease Tenant shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name Landlord as an additional insured, with respect to the Premises and Access Areas, with limits of not less than the following:

General Aggregate:	\$10 million
Products/Completed Operations Aggregate:	\$10 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$5 million

Tenant may satisfy the above coverage limits with a combination of primary coverage and excess liability/umbrella coverage as long as (a) Tenant's primary coverage is at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) annual aggregate, which limits may, at Tenant's election, be carried in the form of two separate policies, (b) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to Landlord, and (c) the combination of such primary coverage and excess liability/umbrella coverage provides Landlord with at least the same protection in all respects as if Tenant had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

9.1.2 If any vehicles are owned or operated by or on behalf of Tenant, Tenant shall maintain Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." In all cases Tenant shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$1 million for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Tenant is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

9.1.4 Commercial Property insurance covering damage to the Improvements, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than \$5,000, and also including business interruption, including loss of rent, equal to two (2) years annual rent. Landlord shall be named as insured party and loss payee of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Tenant or Tenant's contractor will provide the following insurance (Landlord reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including Landlord furnished materials and equipment, against loss or damage until completion and acceptance by Tenant. Landlord shall be named as insured party and loss payee

of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the Landlord for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the Landlord from the date the Alterations are completed and accepted by the Tenant.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as required by the Landlord for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits as required by the Landlord for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as required by the Landlord for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000). If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 **Provisions Pertaining to Property Insurance.** The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the Landlord as the insured party and loss payee with respect to the coverage pertaining to the Improvements (as opposed to Tenant's personal property) and name Landlord as an additional insured with respect to loss or rent coverage.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to Landlord, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Tenant prior to the commencement of any Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Tenant and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Tenant may submit in a form reasonably acceptable to Landlord a certificate of insurance from the insurance company (but not from an insurance broker) that is legally binding upon such insurance company.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Landlord such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Tenant's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that Landlord and its respective Board of Supervisors and members thereof, and Landlord's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of the additional insured which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against Landlord and its respective Board of Supervisors and members thereof, and Landlord's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to Landlord or ten (10) business days in case of cancellation for failure to pay the premium;

(g) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(h) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 **Failure to Procure Insurance.** If Tenant fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from Landlord, in addition to the other rights and remedies provided hereunder, Landlord may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Landlord shall be repaid by Tenant, with interest thereon at the Applicable Rate, to Landlord within five (5) business days after Tenant's receipt of written demand therefor.

9.6 **Adjustment to Amount of Liability Coverage.** The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"). If Landlord and Tenant cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 **Notification of Incidents, Claims or Suits.** Tenant shall report to Landlord any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Tenant and/or Landlord. Such report shall be made in writing within 72 hours of Tenant's knowledge of such occurrence.

10. **MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.**

10.1 Allocation of Maintenance and Repair Obligations. Tenant shall be fully responsible for the maintenance and repair of the interior of the Building (including exterior windows and doors) and all fixtures and utility systems and equipment located therein, except for structural elements, the roof, and heating, ventilation and air conditioning, and elevator systems. Landlord shall be responsible for the maintenance and repair of the structural elements, roof, heating, ventilation and air conditioning and elevator systems and exterior of the Building (excluding exterior windows and doors). Tenant shall be responsible for the maintenance and repair of the patio and other exterior surface and landscaped areas included in the Premises, the Dry Storage Facilities, the fenced in mule storage area, the Hoist and any Hoist/waterside staging areas included in the Premises. Tenant shall be responsible for any damage or degradation to the leak-free condition of the roof membrane of the Boater Restrooms arising in connection with Tenant's use of the patio above the Boater Restrooms. Landlord shall be responsible for the maintenance and repair of the portion of the Parking Lot that is not included in the Premises and the other Access Areas (including without limitation, the Boater Restrooms).

Landlord shall also be responsible for the maintenance and repair of docks G1626 and G1628. In consideration of Landlord's maintenance and repair of docks G1626 and G1628, Tenant shall pay to Landlord on a monthly basis concurrent with its payment of Monthly Base Rent, a maintenance and repair fee equal to twenty-five percent (25%) of the monthly boat slip rental rate charged from time to time for boat slips in the Anchorage of a size comparable to G1626 and G1628. Tenant shall also be required to reimburse Landlord for the cost of any maintenance, repair or replacement of docks G1626 and G1628 necessitated by the act or omission of Tenant or any Tenant Party.

A common water heater (the "Common Water Heater") that serves the Premises and the Boater Restrooms is located in an exterior closet in the Building. Landlord shall be responsible for the maintenance, repair and replacement (as necessary) of the Common Water Heater. Tenant shall provide Landlord with access to the Common Water Heater (including keys to the closet). Tenant shall be required to reimburse Landlord for its share of the costs incurred by Landlord for the maintenance, repair and replacement (as necessary) of the Common Water Heater as a part of (and in accordance with the same Tenant's percentage share as) Tenant's Operating Expenses. If Landlord fails to commence the remedy of any malfunction of the Common Water Heater within five (5) business days after written notice from Tenant, then Tenant shall have the right to perform the required repair or replacement on written notice to Landlord and to offset Landlord's share of the reasonable cost incurred by Tenant for such repair or replacement (i.e., 80%) against the next rent payable under this Lease.

Tenant shall perform its maintenance and repair obligations (a) at its sole cost and expense, (b) such that the portions of the Premises and associated areas required to be maintained and repaired by Tenant are kept in a good, safe, clean and working order and condition, (c) in compliance with all Applicable Laws, and (d) in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Marina del Rey as revised from time to time by Landlord in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "Maintenance Standard"). Any dispute as to whether revisions to the Maintenance Standard adopted by the

Landlord from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. Landlord in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1.

Landlord's repair and maintenance obligations under this Section 10.1 shall be at Landlord's cost, except (i) for those items included within Tenant's Operating Expenses pursuant to Section 4.4; (ii) Landlord shall not be responsible for exterior Building painting unless Tenant agrees to reimburse Landlord for the direct variable cost of such painting, provided that if the Term is extended beyond the initial five (5) year Term and in the Department's judgment the Building requires painting, then Landlord shall have the right to require Tenant to pay for the direct variable cost of such painting as part of the agreed upon terms for the extension of the Term; (iii) Tenant shall be required to varnish the exposed wood rail caps at least once every two (2) years; (iv) Tenant shall be responsible for the cost of any repair necessitate by the act or omission of Tenant or a Tenant Party; and (v) as provided above with respect to docks G1626 and G1628 and the Common Water Heater.

Landlord shall not have any direct or indirect liability to Tenant (including, without limitation, consequential damages or any right to abate, withhold or offset rent) for any malfunction or interruption in operation of the items required to be repaired and maintained by Landlord under this Lease or for any interference with Tenant's operations resulting therefrom or in connection with the performance of Landlord's maintenance and repair obligations under this Lease. Except as expressly provided to the contrary in this Lease, Tenant shall not have the right to perform any work on Landlord's behalf or to offset any costs, expenses or other amounts against rent.

10.2 Maintenance Deficiencies. If Landlord provides written notice to Tenant of a deficiency or other breach in the performance by Tenant of the maintenance and repair obligations of Tenant under Section 10.1 above, then Tenant shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the Landlord's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case Landlord shall have the right to immediately require Tenant to take all appropriate steps to avoid damage or injury. If Tenant fails to cure any such deficiency within the cure period set forth in Landlord's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that Landlord may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Tenant shall pay to Landlord an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in Landlord's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Tenant), then as long as during the specified cure period Tenant commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such